



Environmental claims on supermarket seafood

**Improving product labelling & consumer
protection**

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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

As legal experts working in the public interest, we act to strengthen the work of our partner organisations. Our work covers climate change and energy system transformation, protection of oceans, biodiversity and forests, and environmental justice.

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Executive summary

The problem

Over 80% of seafood sold in the UK is by supermarkets.¹ 25% of global fish stocks are overfished; 88% of stocks in EU waters are overfished; and 19% of stocks in EU waters are in such a bad state that scientists advise that there should be no fishing at all.²

Environmental claims on fish products³ such as 'sustainably sourced' or 'responsibly farmed' are very common among the UK's leading supermarkets and brands. With so many overfished stocks, particularly in the EU, it is likely that many of these claims are false or misleading.

Certainly the consumer faces a confusing landscape of environmental claims on fish products. Largely this stems from the lack of harmonised, detailed and mandatory standards for 'green' claims made on these products. A wide array of labelling schemes and criteria are applied to 'sustainable' or 'responsible' fish sourcing. These lack overarching principles or common definitions. Much could be done by governments to increase quality, consistency and certainty in this area.

Scope

This report examines claims made by consumer-facing, supermarket retailers, and by seafood 'brands' sold in supermarkets across the UK. It does not examine the catering industry or business to business interactions. It is also limited solely to fish and shellfish products.

The claims

ClientEarth examined claims made on 100 fish products, purchased in 9 leading supermarkets in the UK, selected from fish that is potentially associated with environmental problems. Many of these products were the supermarkets' own brands, but the products of 11 additional seafood brands were also included in the purchases. It should be noted that this research represents a snapshot in time for a small sample of UK retailers/branded products, from one geographical location.

We identified seven broad categories of claims made on retail fish products: 'sustainably sourced'; 'dolphin safe / friendly'; 'responsibly farmed / from well managed farms'; 'sourced from a responsibly or well managed fishery'; 'responsibly sourced'; 'environmentally friendly farms'; and 'protects the marine environment'.

Working with KEO Films, an independent broadcast production company, requests for further information were sent to retailers about certain products where we had concerns as to the accuracy of the claim on the products' packaging.

The findings

32 of the 100 products reviewed, from seven supermarkets and one brand, carried claims that we consider misleading or unverified, with the information received from the retailer on the source of the product failing to allay and in some cases heightening our concerns. We consider 22 of these claims to be misleading, on the basis of the information received. In relation to the remaining 10 we did not receive information from the retailers that satisfactorily addressed our concerns.

Overall, we found a bewildering range of environmental claims on fish products, a confusing landscape that does not allow consumers to make informed choices about the environmental impacts of their supermarket choices. We found a lack of comparability and consistency in the use of claims relating to the environmental impact of products, with different supermarkets and certification schemes applying different assessment criteria when judging whether a given claim can be made about a given product.

What should be done?

- Where retailers cannot provide convincing evidence to verify the environmental claims being made on their products, or where vague or misleading environmental claims are being made:
 - Retailers should voluntarily cease the use of these claims
 - In the case that claims of concern are not withdrawn by retailers, consumers or civil society groups should make complaints to the Office of Fair Trading, Trading Standards Services, or the consumer association 'Which?', seeking enforcement of consumer protection law.
- Governmental action is necessary, preferably at EU level, to harmonize the use of claims relating to the environmental impact or sustainability of fish products.
- The UK's Advertising Standards Authority, and other 'self-regulatory' bodies across the EU, should extend their work to cover claims made on product packaging or labels.

Overview: seeking enforcement of consumer protection law

The Consumer Protection from Unfair Trading Regulations 2008 (the Consumer Protection Regulations) make it unlawful for a retailer to give false information on product packaging or to present a product in a way that is likely to deceive an 'average consumer', if it is likely to cause that average consumer to take a different purchasing decision than they would have done otherwise. It is also unlawful for a retailer to omit or hide relevant information on packaging, where that information would cause the 'average consumer' to take a different purchasing decision.

An individual cannot bring a legal action to court under the Consumer Protection Regulations. However, enforcement of consumer protection law can be pursued in the following ways:

- *Complaint to the Office of Fair Trading (OFT)* – A complaint can be submitted to the OFT from the public, setting out an infringement of the Consumer Protection Regulations and seeking an enforcement action. The OFT has a duty to enforce the CPRs and may apply to court for enforcement and sanctions. The OFT has discretion in deciding when to act, but should the OFT decide against pursuing a complaint, internal and other appeals procedures are available. Note that the OFT is soon to undergo considerable structural changes that are likely to affect its enforcement role for consumer protection law.
- *Complaint to a Trading Standards Service (TSS)* – A TSS is provided by every local authority in the UK and each has powers to enforce the Consumer Protection Regulations in relation to environmental claims on product packaging. The local authority must consult with the OFT before bringing an enforcement action, and the limited resources and local nature of TSSs mean that they are not well placed to deal with nation-wide issues such as these.
- *Complaint to 'Which?'* – The consumer association 'Which?' also has powers to enforce the Consumer Protection Regulations, although again it must consult with the OFT before doing so.

A request can also be made to the OFT to conduct a 'market study', a detailed examination into why particular markets are not working well for consumers. One example given by the OFT of such a circumstance is where consumers are unable to make informed choices about prospective purchases.⁴ The market study can lead to a range of actions; from persuading companies to provide better quality information, to the taking of enforcement actions.

Overview: harmonisation of standards for fish packaging and labelling

A major reason for the confusing landscape of environmental claims on fish products is the lack of harmonised, detailed and mandatory standards covering environmental claims and information on fish product packaging. The existing applicable EU legislation, the *Fish Labelling Regulations 2003*, only require fish products to be labelled with the species name, its approximate catch area, and whether it was caught or farmed in fresh or sea water. It does not control the use of terms such as 'sustainable' or 'responsible'.

The use of environmental claims on food labels in other contexts is under much tighter control. For example, the use of the term 'organic' is regulated by EU legislation. While there are many independent eco-labelling schemes that assess fish products and provide certification based on certain environmental criteria, these schemes are voluntary. The voluntary approach has not ensured that green claims are used accurately and understandably in relation to fish products.

Legal requirements should be introduced to regulate and harmonise the use of environmental claims, and the provision of environmental information, on fish products. There is already considerable momentum in the EU towards improved regulation of environmental claims on product packaging, not least in relation to fish products.⁵ ClientEarth strongly supports such developments in light of the findings of this study.

Overview: expanding self-regulation

The UK Advertising Standards Authority (ASA), and self-regulatory bodies in other EU states, could also have an important and positive role in this area. The ASA regulates print and TV advertising in the UK, in a self-regulatory role. This means that it does not enforce law, but rather codes that are agreed on by the advertising industry. It can act effectively, and has forced many companies to remove adverts on account of vague or inaccurate green claims in the past. It also has the flexibility to respond to a dynamic advertising industry, one that will always develop new ways to say the same thing, to sell products or enhance brands.

However, the ASA's remit does not cover product packaging. So although the ASA is well positioned to deal with misleading labelling practices, it will not look at claims of this nature. Recently the ASA's remit was expanded to include advertising on websites, as a result among others things of it receiving thousands of complaints in relation to website advertisements that fell outside of their remit. The ASA can and does take on new responsibilities and so its remit should be expanded to cover product packaging.

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1. Introduction

1.1 Why does 'green' mislabelling matter?

Companies, and in particular supermarkets, increasingly use environmental claims as part of their marketing strategies. One reason for this is that it can have a significant impact on the competitiveness of a product. For example, products using the Marine Stewardship Council (MSC) label, which is a recognised quality mark for fisheries sustainability, showed a 76% increase in retail sales between 2005 and 2006 in the US.⁶ 'Which?' the UK consumer association, conducted research into the public's views on fish labelling and found that 80% of members think supermarkets should only sell sustainable fish.⁷ Consumers are becoming more environmentally concerned in their approach to buying food products, and retailers are capitalising on this trend. This is positive if the environmental status of the product matches up to the claims made about it, but if it does not, it is a problem. Misleading and unverifiable claims also harm competitors who are making accurate environmental claims, often involving expensive third party accreditation, and they undermine the overall credibility of sustainability claims.

1.2 Content of this briefing

Section 2 sets out the methodology that ClientEarth adopted for its factual research, and provides an overview of the findings of that research. It explains what supermarkets and brands are saying in relation to fish products, how many of these claims are of concern and why they are of concern.

Sections 3 to 5 set out the relevant legal and regulatory frameworks.

Sections 3 and 4 set out potential avenues of legal challenge in the UK where retailers are making false or misleading environmental claims about their products (see executive summary, 'what should be done'):

- Consumer protection regulation, derived from EU legislation, as enforced by statutorily appointed bodies. Retailers found to be making false or misleading environmental claims on product packaging should voluntarily cease the use of such claims, but if retailers fail to cooperate, a complaint can be submitted to one of the appointed bodies seeking legal action to force the retailers to do so. This is examined in section 3.
- The self-regulatory regime of voluntary codes of practice, enforced by the Advertising Standards Authority, an independent market watchdog. However, the Advertising Standards Authority does not currently regulate claims made on product packaging or labelling. The ASA and the case for reform are discussed in section 4.

Section 5 sets out the existing legal framework that governs the labelling of fish products, explaining why it is inadequate, and how the framework can and should be improved. It also discusses the many voluntary frameworks that exist for fish eco-labelling, which are a major factor in the confusing landscape of claims currently made on fish products.

2. ClientEarth research on fish products

Our methodology and a summary of our findings are set out below, and full details of the products and claims of concern can be found in Annex 1.

2.1 Methodology

2.1.1 Scope

Only products sold in supermarkets (supermarket own-brand products and branded seafood sold in supermarkets) have been assessed. Claims in the catering industry and business to business interactions were not within the scope of this report.

It should be noted that this research represents a small sample of UK retailers/branded products, from one geographical location and represents a snapshot in time; therefore, it is possible that there could be more or fewer claims in other stores and in the future.

Supermarkets

Research was conducted in one store for each of the following major UK supermarkets: Aldi, Asda, The Co-operative, Lidl, Marks & Spencer, Morrisons, Sainsbury's, Tesco and Waitrose.

Brands

Research was conducted on seafood brands sold by the above retailers including: Birdseye, Glenryck, Findus, John West, Princes, Lyons, Seastar, Swankies Scotland's Fisherman, Saucy Fish Company, Viva Tuna and Youngs.

2.1.2 Products

Within the products examined, research was conducted on seafood claims in a variety of forms including: wet fish counter labels, fresh seafood packaging, frozen seafood packaging, tinned/pouched seafood packaging, jars of seafood packaging, ready meals (fresh & frozen packaging), sandwich packaging, seafood flavoured crisps packaging and in-store magazines.

A number of products were eliminated from further investigation because they had third party certification (e.g. MSC label⁸). In relation to some of these products the certification verified the 'green' claims made, and on a number of products no additional claims were made at all, beyond the fact that they had been third-party certified (e.g. Aldi and Lidl).

2.1.3 Categorisation of 'green' claims

We analysed the products purchased, and identified a number of categories into which the claims being made could be placed. We examined scientific opinion and analysis around each of these categories, so as to understand what would be required for a retailer to adequately verify such a claim, and inversely in what circumstances any of these claims should be considered false or misleading, and as

such may be challengeable under consumer protection law. The categories identified are listed below:

- sustainably sourced
- dolphin friendly / safe
- responsibly farmed / from well managed farms
- environmentally friendly farms
- from well managed fisheries
- responsibly sourced
- protects the marine environment.

2.1.4 Evidence gathering

In collaboration with KEO Films, an independent broadcast production company that was producing a broadcast documentary on the sustainability of fisheries practices, requests were sent to the various retailers for further information on the sources of the products of concern.⁹ The responses to these requests informed our analysis and the findings set out below.

2.2 Findings

2.2.1 Overview

ClientEarth examined 100 claims across 9 leading supermarkets and 11 seafood brands, made on fish products that are known to be associated with environmental problems. On further assessment 32 of these claims from 7 supermarkets and 1 brand were considered to be misleading or unverified.

22 of these claims are considered to be misleading on the basis of the information received. The remaining 10 claims relate to seafood farming, and in these cases we did not receive information from the retailers that satisfactorily addressed our concerns.

Full details of the claims of concern, and why they are of concern, can be found in Annex 1.

The supermarket with the most claims of concern identified was Tesco. On the day the ClientEarth team visited the Tesco retail store, 14 fish products that are associated with environmental problems were labelled either “responsibly sourced”, “well managed” or “dolphin friendly”. Of the stores visited, The Co-operative, Waitrose and Lidl had the fewest claims of concern. Morrisons is not included because they only made claims on tinned tuna, for which we did not receive information to assess the validity of the claim in time. However it should be noted that whilst Morrisons makes few claims on its fish products, this does not mean they exclusively sell sustainable fish, only that they do not attempt to suggest to

consumers that the fish they sell is sustainable. Other supermarkets such as Lidl and Aldi had Marine Stewardship Council (MSC) certified products but made few or no environmental claims themselves.

Sainsbury's and Tesco made some of the most detailed claims. For example on Sainsbury's 'Taste the difference haddock loins' it specifies "we use only line caught haddock from the clear waters of Norway and Iceland". Whilst this shows a good understanding that certain fishing methods can have an impact on the environment and highlights line caught haddock as a method with less impact, the label was still identified as of concern because the fish comes from areas where haddock stock health is at risk due to high fishing levels. Tesco made the following claim on its tinned tuna: "Dolphin friendly: Tesco is fully committed to fishing methods which protect the marine environment and its species". This was identified as of concern as there is evidence that the fishing technique used for this product has widespread environmental concerns.

Birdseye, a leading brand of fish products, is not included in the survey because although they made several strong claims on products that we identified as of concern, we did not receive information from them to assess the validity of the claim as they stated that to give specific details about where and how the fish was caught or farmed was commercially sensitive information.

It is important to note that good practice was also identified across all supermarkets, with many stocking products carrying the MSC logo. This means the fish has been independently third party certified as coming from sustainable fisheries. Similarly many supermarkets sourced from fish farms accredited by the independent third party Global Good Agricultural Practices (GlobalGAP) or Global Aquaculture Alliance (GAA) certification schemes. Examples of such claims are also set out in Annex 1.

Some supermarkets have also gone to significant lengths to improve the credentials of the fish they sell and have detailed sourcing policies. For example, Waitrose has a detailed policy on fish products and states that it does not list any species where there is a common consensus that it is endangered or under threat, and it does not take the existence of a legal quota as evidence of sustainability. Despite a number of Waitrose fish products carrying claims on labels, only one was identified as of concern and unverified.

Marks & Spencer has a commitment to ensure that all wild fish will come from the most sustainable sources by 2012. However, we still identified six claims of concern. Claims on these labels used the term "sustainably sourced" suggesting sustainable sources had already been achieved for these products.

The main problems identified by this survey are a lack of consistency and poorly defined terms used on labels. The labels of concern to ClientEarth are those that fail to communicate the reality that many popular types of fish products on sale in supermarkets come from stocks that are under threat from high fishing levels or low stock levels, or they are sourced using methods that negatively impact the environment and other marine species.

2.2.2 Specific claims

Again, further detail as to the issues discussed below can be found in Annex 1.

Tuna

The majority of labels of concern were found on tuna products. We identified 12 tuna products with labels that were of concern. Asda, Lidl, Tesco and The Co-operative all stock tuna that is labelled “dolphin friendly”. Princes tuna is also stocked by a number of leading supermarkets and contains the label “dolphin friendly” (although the company has said that this product is no longer in production). In each case the labels identify the tuna as “dolphin friendly” but fail to specify that fishing methods used to catch the tuna involve other serious environmental concerns. These include capturing and potentially killing sharks, rays and turtles that are attracted by buoys or floats used to congregate the tuna. As such we consider these claims to be misleading.

Haddock and Cod

10 claims of concern were identified on haddock and cod products. Two of these claims were made by Marks & Spencer on cod which was labelled as “sustainably sourced”. However the cod comes from Canada where it is known that cod stock is in decline. Marks & Spencer, Waitrose, Sainsbury’s and Tesco all made claims of “responsibly” or “sustainably” sourced on products containing haddock caught in Iceland. However, Icelandic haddock is in decline and scientists consider haddock in the region is being fished at an unsustainable level. As such we consider these claims to be misleading.

Farmed fish and seafood

Particular issues arise in relation to claims of ‘responsible farming’ on farmed fish and seafood products because of the potentially very high environmental impacts of seafood farming practices. In relation to these products, we did not receive information from the retailers that satisfied concerns relating to these impacts.

Salmon: Two salmon products at Tesco were labelled ‘responsibly farmed’ but carried no third party assessment of this claim. There are a number of environmental concerns associated with open pen salmon farming, such as the impacts of escapees, disease transfer, and the use of chemicals in the environment, so it is important that individual farms are certified. Although Tesco states that all its farms are independently audited against its own code of practice which it says covers and goes beyond the Global Aquaculture Alliance (GAA) standards, not all farms are certified by an independent third-party, and so our concerns as to the accuracy of the claims have not been allayed.

Prawns: At the time of writing, king prawns are listed by the Marine Conservation Society as a ‘fish to avoid’, due to the serious potential impacts of prawn farming on the environment. For example mangrove forests can and have been destroyed to create ponds for prawn farms. The farmed prawns also rely on wild fish for their food which can have a negative effect on wild fish stocks and other marine life. Organic

farming and independent third-party certification of farming practices can address some of these concerns. We found environmental claims on certain Waitrose and Tesco king prawn products, and these were backed by independent third party certification that covers environmental issues. In contrast, 'Honduran king prawns' sold by Marks & Spencer and 'Taste the difference jumbo king prawns' sold by Sainsbury's carry claims of being farmed on an 'environmentally friendly farm' and being 'responsibly sourced' respectively. Yet these labels are not independently assessed by the recognised third party standards, which is problematic given the serious environmental harm that can occur as a result of farming practices.

Other species: Tesco also made claims on trout, seabass and seabream products that come from fish farms. Again, there are a number of environmental concerns regarding these farmed fish, similar to those relating to farmed salmon, and although Tesco states that all its farms are independently audited against Tesco's own code of practice, not all the farms are third party independently certified against environmental standards and as such our concerns as to the accuracy of the claims on the products' labels have not been allayed.

3. UK consumer protection law and environmental claims on fish products

3.1 The UK Consumer Protection Regulations

In the United Kingdom, the Consumer Protection from Unfair Trading Regulations 2008 ('the Consumer Protection Regulations' or 'CPRs') protect consumers from unfair, misleading or aggressive commercial practices by businesses.¹⁰ The CPRs apply to any act, omission or other conduct by businesses directly connected to the promotion, sale or supply of a product to consumers.¹¹ This includes product labelling and packaging, as well as environmental claims that are made about products.¹²

If environmental claims made about products are misleading or false, the CPRs provide a means by which they can be challenged, and might be prohibited. Such a challenge could also lead to civil or criminal sanctions.

A number of the claims identified above in relation to fish products may be in breach of the CPRs. This view is necessarily qualified, as there is a lack of case law or guidance on a number of key legal points. Nevertheless, strong arguments can be made that a number of the claims assessed are 'misleading actions' under the CPRs, and as such are prohibited by law.

However, individual consumers or members of the public cannot take a complaint to court under the CPRs – they must make a complaint to one of the bodies appointed to enforce the CPRs, who may then bring legal action. The main enforcers in the UK are the Office of Fair Trade (OFT) and the Trading Standards Services (TSS).

EU background

The CPRs implement the EU Unfair Commercial Practices Directive¹³ ('the Unfair Commercial Practices Directive') into UK law. The European Commission ('the Commission') has published extensive interpretive guidance on the key provisions of the Unfair Commercial Practices Directive (and therefore the CPRs), including the relevant EU case law. As UK courts are bound to interpret domestic law in light of the wording and purpose of the EU directive that it transposes,¹⁴ how the CPRs are to be applied and interpreted will to a great extent be determined by the Unfair Commercial Practices Directive. Therefore the Commission's guidance is discussed below where relevant.

See Annex 2 for further detail on the interpretation and application of the CPRs.

3.1.1 Key questions

The CPRs prohibit business practices that give false or misleading information to consumers, and that would be likely to cause a change in the purchasing behaviour of the 'average consumer' as a result. The average consumer is a legal concept, defined in case law and guidance – this is discussed below.

The CPRs also prohibit business practices that omit or hide 'material' information, or provide material information in an unclear, unintelligible, ambiguous or untimely

manner, again where it would cause a change in the purchasing behaviour of the 'average consumer'.

The following questions are the starting point for an assessment of whether the CPRs have been breached:

- Is the claim false and therefore untruthful?
- Would the claim deceive or be likely to deceive the 'average consumer'?

If either of these questions can be answered yes, then the issue turns on the following:

- Would the practice be likely to cause the 'average consumer' to make a 'transactional decision' they would not otherwise have made?

3.1.2 Key concepts

The average consumer

Determining the characteristics and tendencies of the 'average consumer' for the purposes of the CPRs is not a statistical test – the court will exercise its judgement, having regard to the case law of the Court of Justice of the European Union (the 'Court of Justice'), to determine the typical reaction of the average consumer in a given case.¹⁵

Among other things, the average consumer is defined in case law from the European Court of Justice (ECJ) as a "*reasonably well informed and reasonably observant and circumspect*" person.¹⁶ However, the average consumer is a concept which must be interpreted in light of Article 114 of the Treaty on the Functioning of the European Union (TFEU), which provides for a high level of consumer protection:¹⁷ a balance will be struck to allow for a certain amount of "sales puff" whilst at the same time protecting the consumer.¹⁸

The European General Court has stated that the average consumer:

*"...normally perceives a mark as a whole and does not proceed to analyse its various details... In addition, account should be taken of the fact that the average consumer only rarely has the chance to make comparisons between the different marks...and...the average consumer's level of attention is likely to vary according to the category of goods and services in question."*¹⁹

The average consumer test is also theoretical: there is no requirement to show evidence that actual consumers have *in fact* been affected by a given commercial practice.²⁰

Different practices, and even the same practices in different circumstances, may be found to have different effects depending on the type of consumer they reach or affect.²¹

Where a commercial practice is directed towards a particular group of consumers, the 'average consumer' is defined as the average member of that group, and it is that group's characteristics that are relevant when defining the average consumer and determining how they would be likely to act. The classic example is that of advertising directed at children: in such cases, the 'average child' would be the relevant 'average consumer'.

In assessing whether a practice is directed at a specific group, evidence may be found among other things in where or how the advertising is placed, the language used, as well as the context and the type of product.²²

This is of particular relevance to environmental claims made on products, which can be assumed to be targeted at consumers who have regard to the environmental impacts of their purchasing decisions.

While there is not yet any case law to support the application of this principle in this specific context, such an application is entirely consistent with the purpose of the Unfair Commercial Practices Directive, and is strongly arguable based on the wording of the CPRs.

Transactional decision

A 'transactional decision' under the CPRs is any decision taken by a consumer in relation to a purchase, including:

- whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product; or
- whether, how and on what terms to exercise a contractual right in relation to a product.²³

The definition also states "*any decision...*"²⁴ and therefore should be interpreted in a broad manner and cover a wide range of decisions made by the consumer, such as a decision to purchase a product or not to do so, or even deciding to travel to a traders shop to purchase a product.²⁵ The test is not limited to actual consumer behaviour, but whether there is a likelihood of impact.²⁶

3.2 Application of the CPRs to environmental claims made on fish products

An overview of how we consider the prohibitions of the CPRs to apply to different categories of 'green' claims found in relation to fish products, and therefore may be used to challenge them in the case of false or misleading claims, is set out below.

'Sustainable' claims

Where a retailer claims that fish is from 'sustainable' stocks, or has/have been 'sustainably sourced', we consider that these are assertions of fact. If authoritative scientific opinion shows that a particular fish stock or fishing technique is not sustainable, or if there is significant debate as to the sustainability of that stock or

technique, then an assertion of fact that a product is from a sustainable source is in our view false.

We also consider that such (false) statements would cause the average consumer to make a different transactional decision than they would have made otherwise, as:

- The 'average consumer' is in this context to be considered as the average 'environmentally-concerned' consumer;²⁷
- 'Transactional decision' encompasses the decision to purchase a product or not.²⁸

We consider that the average consumer who has concern for the environment would not purchase a fish product labelled as sustainable if they knew that it was not in fact from a source that could be considered sustainable on the basis of reliable, independent and objective sources and based on an authoritative scientific opinion.

Therefore where claims relating to sustainability are made that cannot be verified with reference to scientific evidence, then such labelling is a misleading action under the CPRs and as such prohibited.

'Dolphin-friendly' claims

Where a retailer claims that fish products are 'dolphin-friendly', this is likely to give the average consumer the impression that no major marine species have been harmed in the sourcing of the product. Where other marine species have been harmed, or bycatch levels are high, by fishing techniques used to source 'dolphin friendly' products, there is a strong argument that the use of a dolphin-friendly logo either deceives or is likely to deceive the average consumer.

Again, it is likely that this will cause the average consumer to make a different transactional decision than they would otherwise have done, as in this context the 'average consumer' must be considered to be an average consumer who cares for the marine environment.

Sourced from 'responsibly / well managed farms' claims

Where a retailer claims that fish products are from 'responsibly managed' or 'well managed' farms, this implies that there is a standard of farming which can be distinguished from other fish farms by high environmental standards. In the context of fish farms, general scientific information cannot be used in the same way as for wild fish. Wild fish belong to a 'stock' which is harvested by many fisheries and can be assessed as one stock, whereas in fish farming it is necessary to look at each farm individually. Therefore, the only way to ascertain whether or not farms are responsibly managed or use sustainable practices is if they are independently certified against an environmental benchmark; if the product is not certified organic or certified by the Global Aquaculture Alliance (GAA)²⁹ or GlobalGAP,³⁰ it is very difficult to verify the relevant claims. Therefore in the absence of such certification significant concerns will remain as to whether the claim misleads or would be likely to mislead the average consumer.

As before, there is a strong argument that these claims, if not substantiated, would lead the average consumer to make a different transactional decision than they would otherwise have done, as again the 'average consumer' must be considered as the average consumer who cares for the environment.

'Environmentally friendly farming' claims

The same reasoning applies as in relation to 'responsibly / well managed farms'.

Sourced from 'responsibly / well managed fisheries' claims

Where a retailer claims that a fish product is sourced from 'responsibly managed' or 'well managed' fisheries, this is likely to lead the average consumer to believe that the product has been sourced from a fish stock which is sustainably managed according to authoritative scientific opinion; that this 'responsibility' has led to actual results regarding environmental impacts of the sourcing of the fish that they sell; and that there are no concerns to be had about the environmental or conservation impact of the product bearing the statement. Therefore where authoritative scientific opinion shows that the catch method and/or the state of the fish stock in a particular catch area is actually unsustainable, then such claims are likely to deceive the average consumer.

The same argument as above applies to the likelihood of the average consumer taking a different transactional decision and the average consumer being considered as the average consumer who cares for the environment.

'Responsibly sourced' claims

Where a retailer claims that a fish product is responsibly sourced, this would lead the average consumer to believe that this 'responsibility' has led to actual results regarding environmental impacts of the sourcing of the fish that they sell; that there are no concerns to be had about the environmental or conservation impact of the product bearing the statement. Therefore where authoritative scientific opinion shows that the product was sourced from an unsustainable stock, such a claim is likely to deceive the average consumer.

The same argument as above applies to the likelihood of the average consumer taking a different transactional decision and the average consumer being considered as the average consumer who cares for the environment.

'Protects the marine environment' claims

Where a retailer claims that a fish product is sourced in a manner that 'protects the marine environment' this is likely to lead the average consumer to believe that the product has been sourced from a fish stock which does not result in high levels of bycatch, or involve the capture and potential harm of other marine species. Where other marine species have been harmed by fishing techniques used to source products labelled in this way, the use of a logo that states 'protects the marine environment' or equivalent is likely to deceive the average consumer.

The same argument as above applies to the likelihood of the average consumer taking a different transactional decision and the average consumer being considered as the average consumer who cares for the environment.

3.3 Enforcement of the Consumer Protection Regulations

In the case that a claim made on product packaging is likely to be in breach of the CPRs, and the given retailer will not cease using the claim voluntarily, a number of appointed enforcers may make an application to court seeking enforcement. Members of the public are not able to do so.

The primary enforcer in the UK is the Office of Fair Trading (OFT). Local authority Trading Standards Services (TSS) are also important public enforcers. Both have a duty to enforce the CPRs. The OFT is a national organisation, whereas the TSS are regionalised, based in local authorities.

Before making an application, an enforcer must engage in 'appropriate consultation' with the person against whom the enforcement order would be made.³¹ An appropriate consultation would include seeking a voluntary agreement from the retailer to cease the infringement.³²

In the case that no agreement is reached, an enforcer³³ may seek³⁴ and the court may order³⁵ an injunction that directs the retailer, or relevant employees, not to continue or repeat any breach of the CPRs.³⁶

3.3.1 Office of Fair Trading

The OFT is an independent organisation that has a statutory duty to promote and protect UK consumer interests.³⁷ The OFT is listed as a 'general enforcer' under Part 8 of the Enterprise Act, 2002, with civil and criminal powers, and a duty to enforce the CPRs.

It is important to note that the OFT is soon to undergo considerable structural changes. The UK government recently announced that it will consult in early 2011 on a proposed merger of the OFT with the Competition Commission to form a single competition and markets authority.³⁸ Additionally, the government announced that it will carry out a review of the landscape of consumer protection bodies with a view to devolving most consumer protection powers to local authority Trading Standards services.³⁹ It remains to be seen exactly how competence for enforcement of consumer protection legislation will be restructured.⁴⁰

Prioritisation of complaints by the OFT

When assessing whether to bring a legal action for enforcement of the CPRs, the OFT takes a range of non-exhaustive 'general prioritisation principles' into account and, in particular, assesses who is best placed to take effective action in any complaint.⁴¹ Where the unlawful practice causes or risks significant consumer detriment nationally, or in at least two UK nations or regions, it is likely that the OFT is best placed to take enforcement action.⁴² Moreover, it is normal practice for the OFT to agree with TSS which complaints should be most appropriately handled by

each body respectively.⁴³ Other prioritisation principles are also taken into account to reach a balanced decision, including⁴⁴ impact on consumer welfare;⁴⁵ strategic significance for the OFT;⁴⁶ risk (the likelihood of a successful outcome); and resource requirements.⁴⁷

OFT market studies

The OFT may conduct market studies into why particular markets are not working well for consumers, leading to proposals as to how they might be improved.⁴⁸ Market studies may relate to practices across a range of goods and services and are not limited to markets in the economics sense.⁴⁹

In deciding whether to conduct a market study, the OFT may make an initial assessment, review any history of complaints made to the TSS and Consumer Direct (a government funded advice service for consumers), and consider the costs against the benefits of the study.⁵⁰ Market study proposals are then considered against the OFT's prioritisation principles (see above).⁵¹ It should be noted that in complaints where there is a clear breach of consumer protection law by a business, taking enforcement action will usually be preferred over starting a market study.⁵²

Market studies may lead to: consumer information campaigns; encouraging businesses in the market to self-regulate; making recommendations to government to change regulations or public policy; taking competition or consumer enforcement action; or giving a clean bill of health to a market (i.e. to conclude that on balance the market is fine).⁵³

OFT complaints / appeals

Any complaints in relation to the OFT's procedures and handling of a complaint (e.g. if the OFT wrongly refuse to deal with a complaint) should in the first instance be directed to the OFT by writing to them. If a party is dissatisfied with the OFT's response, they may write to the General Counsel of the OFT who will further consider the merits of the complaint. If still dissatisfied, the complaint can be referred through a Member of Parliament to the Parliamentary and Health Service Ombudsmen.⁵⁴ Alternatively, an action for judicial review of the OFT's decision may be brought. The courts have allowed the OFT significant discretion as to how they allocate their resources and decide what action to take, even after an investigation has commenced; a previous attempt to judicial review an OFT decision to close an investigation concerning competition issues, on the grounds of administrative priority, was rejected by the court.⁵⁵

However, as a result of the Aarhus Convention,⁵⁶ ratified by the UK in 2005, there is a strong argument that the court must now be willing to go further and review the merits of a decision by a public body (including the OFT) where it contravenes provisions of its national law relating to the environment (see Art 9(3) of the Aarhus Convention). The Compliance Committee to the Aarhus Convention recently expressed concern⁵⁷ that the standard grounds for judicial review in the UK⁵⁸ do not currently provide citizens the level of review of substantive legality granted to them under the Convention. Instead the Compliance Committee proposed the much wider

test of proportionality,⁵⁹ which in this case would require the court to enquire into the facts behind the OFT's decision not to investigate or prosecute a matter.

3.3.2 Trading Standards Services

Trading Standards Services (TSSs) are run independently by local authorities across the UK. They are the local authority departments, formerly known as "weights and measures" authorities, which work with consumers and businesses to maintain fair trading and safety of consumer goods. Part of this role is the local enforcement of consumer protection legislation, including the CPRs.

The various Trading Standards authorities are authorised enforcers under the Enterprise Act 2002,⁶⁰ and as such may bring legal action for the enforcement of the CPRs. However, they can do so only after they have consulted with the OFT.⁶¹

The Trading Standards Services of different local authorities will have different approaches to enforcement of the CPRs; for example, by taking into account a company's response, the company's compliance record, the result of any inspection and the gravity of the offences.⁶²

Due to their regional structure, Trading Standards Services' primary role is in relation to local issues. They are not ideally placed to bring enforcement actions in relation to national issues, such as the mislabelling of a product by a national retailer.

Trading Standards Services complaints / appeals

If an individual is dissatisfied with the way that a local authority Trading Standards Service has dealt with a complaint about a trading practice, or is dissatisfied with the way the Trading Standards Service carried out their investigative and enforcement work, there are a number of avenues for appeal or complaint. A complaint can be made to the Local Government Ombudsman, although local authorities will have an internal complaints procedure which must be utilised before the Local Government Ombudsman will consider a complaint.⁶³ Judicial review can also be sought for the decisions of local authorities, although there will be limitations on how far the courts will go in reviewing the merits of a given decision.

4. The UK's self-regulatory system: Advertising Standards

As well as the regulatory system under the CPRs, the UK also has a self-regulatory regime for advertising. The self-regulatory system is not based on law, but rather codes of practice that the advertising industry agrees to adhere to voluntarily and that are enforced by the Advertising Standards Authority (the ASA). The ASA can act and has acted effectively to force companies to remove adverts on account of vague or inaccurate green claims. The ASA enforces two main codes, one for broadcast and one for non-broadcast advertising.

However, the ASA will not currently examine or challenge claims made on product packaging or labels: these fall outside of its current remit. Therefore it is not currently possible to challenge false or misleading green labelling under advertising standards codes. However, given the ASA's track record of highly effective regulation, and the clear synergies with its existing work, there is a strong case for extending the ASA's role to cover packaging and labelling.

4.1 The Advertising Standards Authority

The ASA is the UK's independent advertising watchdog whose role is to maintain high standards in advertising for the benefit of consumers, advertisers and society in general.⁶⁴ The ASA is funded by advertisers through a levy on advertising spend.⁶⁵ The ASA is reactive rather than proactive, relying on complaints made by competitors or the public to bring breaches of the codes to its attention.

The self-regulatory system is recognised as an integral part of consumer protection, and as being complementary to, rather than in competition with, the regulatory system under the CPRs and the Unfair Commercial Practices Directive:

*"The self-regulatory system is recognised by the Government, the Office of Fair Trading (OFT) and the Courts as one of the "established means" of consumer protection in non-broadcast marketing communications."*⁶⁶

The ASA enforces two codes of practice: one relating to broadcast, and one to non-broadcast advertising. The non-broadcast code is called the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code).⁶⁷

4.2 The CAP code

The Committee of Advertising Practice (CAP) Code applies to published advertisements in, for example, newspapers and magazines.⁶⁸ However, the CAP Code does not apply to product packaging and in-store advertisements such as posters or banners unless they contain a sales promotion.⁶⁹ Also, the ASA's remit for online advertisements does not cover editorial content on websites (other than paid for advertisements or sales promotions), although this is due to change as of March 2011 when advertising on an organisation's own website will be covered.⁷⁰

The general public, competitors or other interested parties may lodge complaints with the ASA.⁷¹ It is for the advertiser to show that its green claims comply with the relevant code.⁷²

Relevant rules of the CAP Code include: -

Rule 1.1: Marketing communications should be legal, decent, honest and truthful.

Rule 1.2: Marketing communications must reflect the spirit, not merely the letter, of the Code.

Rule 1.3: Marketing communications must be prepared with a sense of responsibility to consumers and to society.

Rule 3.1: Marketing communications must not materially mislead or be likely to do so.

Rule 3.7: Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove claims that consumers are likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation.

Rule 11.7: Marketing communications must not mislead consumers about the environmental benefit that a product offers; for example, by highlighting the absence of an environmentally damaging ingredient if that ingredient is not usually found in competing products or by highlighting an environmental benefit that results from a legal obligation if competing products are subject to that legal obligation.

4.3 The ASA's enforcement approach and record

On finding a breach of the CAP Code, the ASA will ask the advertiser to change or withdraw it, but the ASA do not levy fines. The ASA employ a range of methods to ensure compliance including the refusal of advertising space, adverse publicity through the publication of its rulings online, and the ability to refer the advertiser to the OFT.⁷³

The ASA has a demonstrated track record of effectively tackling and prohibiting insubstantial or vague environmental claims made by even the biggest multinationals. For example, in 2007/08, the ASA ruled against (among others):

- Shell regarding claims made in an advert as to the company's investment in sustainable resources, in the context of its investments in oil sands;⁷⁴
- ExxonMobil regarding vague language used in an advert to imply the sustainability of natural gas;⁷⁵
- Lexus regarding claims as to the low emissions of Lexus cars;⁷⁶
- Malaysia Palm Oil Council regarding misleading implications on the sustainability of palm oil;⁷⁷

- British Gas for the claim of 'carbon zero';⁷⁸
- Ryanair for false claims relating to aviation emissions.⁷⁹

4.4 Extending the ASA's remit

There is a strong case for expanding the ASA's remit so as to cover claims made by retailers on product packaging.

There is a need for this reform: point-of-sale information is an important factor in determining consumer behaviour and environmental claims are increasingly used by retailers to drive sales; the ASA itself has referred to green marketing claims as a key commercial battleground for retailers.⁸⁰

There are also a number of advantages to the self-regulatory model of consumer protection: in particular it does not rely on public funding for enforcement, and it is cheap and quick to enforce relative to litigation under consumer protection law.

This, particularly in light of the ASA's existing role in monitoring and regulating misleading advertising in a number of other contexts, makes a strong case for the expansion of the ASA's remit to cover misleading claims on product packaging, and other poor labelling practices.

In order to extend its activities to cover product packaging and labelling, the ASA's resources would need to increase; as with its expansion to cover online advertising, a structure would have to be established to fund this work. An ASA spokesperson has gone on record saying that a pay structure to fund regulation of packaging and labelling is feasible.⁸¹

5. Fish labelling frameworks

This section sets out an overview of the existing legal framework that governs the labelling of fish products. This is currently inadequate to allow consumers the information necessary to assess the sustainability of a given fish product. We explain why, and how the framework can and should be improved.

The section then discusses the many voluntary frameworks for fish eco-labelling, which are a major factor in the confusing landscape of claims currently made on fish products, supporting the case for harmonisation through regulation.

5.1 The regulatory framework for fish product labelling

5.1.1 Overview

The retail sale⁸² of fishery products⁸³ in the UK is subject to the Fish Labelling Regulations 2003.⁸⁴ The recognised legal names for species of fish are listed in the Fish Labelling Regulations list, which is regularly updated by the Food Standards Agency (FSA) as scientific opinion changes.⁸⁵ There are additional labelling requirements for fish which has been irradiated, previously frozen, smoked and/or contains any genetically modified material.⁸⁶

The Fish Labelling Regulations do not require that packaging provides information that is sufficient for consumers to make an assessment of the environmental credentials of a given product. Further, they do not define the circumstances in which certain key terms such as 'sustainable' or 'responsible' may be used on fish product packaging, and the criteria which should apply to their use. We consider that regulatory reform is necessary to harmonise the use of these terms and the information provided on fish product packaging. ClientEarth intends to develop proposals in this area.

The FSA has produced Fish Labelling Guidance to facilitate uniform application and enforcement of legislation, with specific reference to those provisions which ensure that consumers are presented with meaningful and accurately labelled products.⁸⁷ The FSA guidance principally relates to the rules set down in European Council Regulation 104/2000⁸⁸ on the common organisation of the markets in fishery and aquaculture products and Commission Regulation 2065/2001⁸⁹ laying down detailed rules for application of Council Regulation 104/2000 as regards consumer information. These Regulations are directly applicable in the UK and enforcement provisions are included in the Fish Labelling Regulations.⁹⁰

5.1.2 Information requirements of the Fish Labelling Regulations

The following information must be included on labelling of all fishery and aquaculture products⁹¹ which are marketed within the EU:⁹²

- *The commercial designation of the species* – EU Member States have drawn up and published a list of the commercial names of at least the species outlined in Article I to IV of the European Council Regulation 104/2000, and an up-to-date list for the English jurisdiction can be found in the Schedule of The Fish Labelling

(England) Regulations, 2010.⁹³ It is not a requirement to include scientific names on the labelling of a product.⁹⁴

- *The production method* – the manner by which the fish is harvested (i.e. whether it is caught at sea or in freshwater, or produced by aquaculture by the farming of seafood)⁹⁵. The regulations prescribe that the following terms must be used:

- For products caught at sea – “caught”
- For products caught in freshwater – “caught in freshwater”
- For products of aquaculture – “farmed” for fish and “cultivated” for unfed shellfish

It is not necessary to use the term “caught” if it is obvious from the commercial designation or the catch area that the species have been caught at sea (e.g. Sea Bass, N.E. Atlantic Haddock, etc.). However the production method should be included if there is any doubt.⁹⁶

- *The catch area* - the origin of the fish must be indicated on the labelling as follows:⁹⁷

- For products caught at sea – by reference to 12 catch areas based on the Fishing and Agriculture Organisation of the United Nations (FAO) statistical classifications found in the Annex to Commission Regulation 2065/2001;
- For products caught in freshwater – by reference to the Member State or third country of origin; or
- For farmed or cultivated products - by reference to the Member State or third country where the product underwent final development (i.e. final harvest size), although it is recommended to include all places of origin to give consumers accurate and meaningful information.

Some commercial designations include geographic names, which might not relate to where the fish was actually caught (e.g. Dublin Bay Prawn caught in the N.E. Atlantic), and while it is permitted to use these names, the true catch area must be indicated.⁹⁸ Information on origin on the packaging of processed fish relates to the origin of the processed product and not to the origin of the fish, unless otherwise stated.⁹⁹

More information needed

This information alone is not sufficient to allow consumers to make an assessment of the environmental credentials of a given product. There are many additional pieces of information that are needed to do so. For example:

- The level of detail on production methods must be higher: consumers need to know the fishing gear used for fish caught at sea or in fresh water, and the accreditation standards for farmed or cultivated fish. Some production methods have

more serious environmental impacts than others, for example tuna fishing with pole and line is more selective and less damaging to other marine species than purse seine fishing with FADs.¹⁰⁰

- Specific stock references should be a labelling requirement: the sustainability of most commercial species in Europe is assessed by scientists¹⁰¹ according to sub-areas of the FAOs, and this is the minimum that a consumer requires to make an assessment of the state of the stock from which the product was sourced.
- For farmed or cultivated products, places of origin must be stated on the product label: only stating the place of final development does not allow the consumer an accurate evaluation of the environmental impact of the product.

5.1.3 Regulating the use of specific terms

The Fish Labelling Regulations do not make any provisions regarding the use of key and regularly used terms in relation to fish products, such as 'sustainable' or 'responsibly sourced'. This is problematic, as retailers apply different criteria in assessing what products can be labelled 'sustainable' or 'responsible', and the consumer is unable to make informed, comparative decisions about which fish products have been sourced with least harm to the environment.

The term 'organic' is an example of an area where regulation has been introduced to address this very same problem, and provide consistency that can be relied on by the consumer.

The Organic Production Regulations

The 'Organic Production Regulations'¹⁰² are an example of where legislation governs how and when certain environmental claims can be made on product labels or packets.¹⁰³ The Organic Production Regulations provide that any reference to organic food or its production may only be made on a product label where its production has adhered to the requirements of the Organic Production Regulations.¹⁰⁴ According to the Regulations, organic production must establish a sustainable management system for agriculture, produce products of high quality and produce food and agricultural products that do not harm the environment, human, plant or animal health.¹⁰⁵ Organic production must be based on ecological systems using natural resources, restricting the use of external inputs (particularly chemicals) and adapting to regional differences in such things as climate and husbandry practices.¹⁰⁶ The Organic Production Regulations specify detailed rules on farming practices, processing, production, labelling, controls and trade. The main principle of organic farming is restriction in use of artificial chemical fertilisers, pesticides, drugs and antibiotics, but not necessarily that animals are 'free-range'.¹⁰⁷

Similar requirements should be introduced to specify the circumstances in which the term 'sustainable' could be applied to a fish product, which could make reference to a range of external criteria such as the catch method, the ICES assessment of the stock from which the fish was sourced, etc.

5.2 Voluntary frameworks for fish product labelling

A plethora of voluntary labelling initiatives exist for fish products. These initiatives involve a third-party assessment of the product's sourcing, which if satisfied allows the product to carry the third-party's endorsement. A range of these initiatives are examined in detail in Annex 3, including those of the Marine Stewardship Council (MSC), the Earth Island Institute (EII), the Inter-American Tropical Tuna Council (IATTC), Friend of the Sea (FOS), Naturlands and the Marine Aquarium Council (MAC).

These initiatives all apply different methodologies and criteria; there is no consistency in how the various schemes assess fisheries (see Annex 3). The details of how they assess the sustainability or other environmental credentials of a given product or fishery are complex, and are difficult for the lay-person to compare and understand. All of this contributes to a landscape of environmental claims and labelling practices on fish products that is highly confusing for the consumer. Even where a retailer has expended the time and resources to seek third-party certification of its products, the consumer is still left in doubt and confusion as to the environmental credentials of that product.

This makes it extremely difficult for the consumer to make informed purchasing choices with fish products. For this reason among others ClientEarth strongly supports the introduction of harmonised and detailed legislation to govern the labelling of fish products, as outlined above.


Annexes

Annex 1

Factual findings

There are a total of nine sections in this annex. Eight sections regarding claims of concern, ordered by retailer, and the final section containing examples of claims of concern that were subsequently substantiated by the retailer. The tables set out the name of the retailer, the product, the claim, and a photograph of the product in question. This is followed by a summary of ClientEarth's concern, factual evidence supplied by the retailer in response to enquiries about the products, and the reasons for our residual concern (or the reasons we considered the claims to be substantiated in the case of the final section). References to documents and personal communications used to compile these annexes are also provided.

Annex 1a – Asda

Retailer:	Asda			
Products:	Tuna & sweetcorn sandwich.	Tinned Tuna chunks in sunflower oil.	Extra special yellowfin ventresca tuna fillets in sunflower oil.	Tinned Smartprice Tuna chunks in brine.
Claims:	<i>"Dolphin Friendly"</i> .			
Photos:				
Summary of concern:	<p>These products contain some tuna caught with Purse seines using Fish Aggregating Devices (FADs). There is considerable concern from scientific and other commentators about tuna fishing with FADs and the bycatch of species (other than</p>			

dolphin) associated with such fishing methods. For example, Greenpeace & Monterey Bay Aquarium consider that this type of fishing is not environmentally friendly.

Evidence from retailer:¹

- The tuna in these products is Skipjack/Bigeye/Yellowfin tuna caught in "*Western / Central Pacific Ocean*" and the Indian Ocean, *using Method of catching: Purse Seine and pole and line*".
- "*All the purse seiners use FADs...they are floating FADs. Restrictions are to observe the ICCAT moratorium. Materials used are bamboo, old fishing nets, old car tires and twines.*"

Reasons for concern:

- Purse seining is of particular environmental concern when carried out with FADs. FADs are floating devices which attract fish and other marine species (e.g. by lights or bait) to gather around the device. Some FADs have a fish detecting device which transmits to the fishing vessels details of the fish gathering under the device. Once enough fish have gathered, the purse seine boat encircles the area around the FADs with the net to catch everything under the FADs.
- Purse seining with FADs tends towards high levels of 'bycatch'. In particular, FADs are known to have associated bycatch of juvenile tuna, other pelagic fishes, as well as sharks and turtles some of which are on the International Union for Conservation of Nature (IUCN) red list of threatened species.
- The use of FADs with purse seines is regarded as "a critical conservation concern" and a "non-sustainable practice" due to their levels of bycatch.

References:

- Food and Agriculture Organisation of the UN (FAO), Fisheries and Aquaculture Department, 'Fishing Techniques – Tuna Purse Seining', at <http://www.fao.org/fishery/fishtech/40/en> (sourced from Ben-Yami, M., *Purse seining manual*, [1994], FAO and Fishing New Books Ltd.), date accessed: 19/11/10.
- Marsh, J., 2010, 'Monterey Bay aquarium seafood watch report - Skipjack tuna *Katsuwonus pelamis*', Monterey Bay Aquarium publications.
- Amandè, M-J., et al, 2008, 'Silky shark (*Carcharhinus falciformis*) bycatch in the French tuna purse-seine fishery of the Indian Ocean'. Indian Ocean Tuna Commission Working Party on Ecosystem and Bycatch (IOTC WPEB).
- Delgado de Molina, A. et al, 2005, 'Project on new FAD designs to avoid entanglement of by-catch species, mainly sea turtles and acoustic selectivity in the Spanish purse seine fishery in the Indian Ocean', Spanish Oceanographic Institute.
- International Union for Conservation of Nature and Natural Resources (IUCN), 'Red List of Threatened Species, at <http://www.iucnredlist.org/>, date accessed: 19/11/10. Note: Olive Ridley (*Lepidochelys olivacea*) sea turtle and Kemp's Ridley sea turtle (*Lepidochelys kempi*) have been listed as endangered on the IUCN red list of threatened species for several years. Silky Shark (*Carcharhinus falciformis*)

¹ Pers. comm. Email from Vickie North, Consumer PR Manager (Food and Non Edible Grocery), Media Relations, Asda, to Lauren Rowles, Keo Films Ltd on 26/10/10 & 02/11/10. Subject: Tuna questions.

is listed as 'near threatened' on the IUCN red list of threatened species.

- Monterey Bay Aquarium, Seafood Watch advice 2010, Yellowfin Tuna, purse seine/longline caught, worldwide except US Atlantic, at http://www.montereybayaquarium.org/cr/SeafoodWatch/web/sfw_factsheet.aspx?fid=209, date accessed 19/11/10.

Annex 1b – Lidl

Retailer:	Lidl.
Products:	Nixie tinned Tuna steak in olive oil.
Claims:	"Dolphin safe" logo.
Photos:	
Summary of concern:	<p>This product contains yellowfin tuna caught using purse seines from Eastern Central Atlantic, Western Central Pacific, Eastern Central Pacific & Southeast Pacific. We did not receive confirmation of whether FADs are used. Although the dolphin friendly label is particularly applicable for yellowfin tuna caught in the Eastern Central Pacific ocean, if FADs are used then it is also likely that there is other bycatch associated with this fishery.</p>
Evidence from retailer:²	<p><i>"Our Nixie Tuna Steaks in Olive Oil consist of Yellowfin Tuna (Thunnus Albacares). These are also caught using the purse-seine fishing method. The main FAO zones in which this tuna is caught are: 34, 71, 77 & 87 (Eastern Central Atlantic, Western Central Pacific, Eastern Central Pacific & Southeast Pacific). Both the Tuna Tins and our Tuna and Sweetcorn Sandwiches carry the blue dolphin safe logo which represents our commitment to protect dolphins during tuna fishing. The Earth Island Institute has been certifying Lidl tuna tins for more than 10 years. It works to promote dolphin friendly fishing and is considered to be the strictest monitoring system. To obtain this certification dolphin may not be accidentally killed or seriously injured as a result of the fishing methods used. Each vessel must have an independent observer on board to ensure all dolphin friendly fishing requirements are met. In addition, we greatly support sustainable fishing and first introduced MSC products into our stores back in 2006. We have also taken the decision not to list any fish species that is known as being endangered. As a company we take our Corporate Social Responsibility and the impact we have on the environment and our resources extremely seriously."</i></p> <p>Note: This quote does not satisfactorily show that the tuna used in this product is sourced from purse seine fisheries that do not use FADs. Although other products</p>

² Pers. comm. Email from Georgina Hall, PR Manager Lidl UK, to Lauren Rowles, Keo Films Ltd, on 27/10/10 and 26/11/10. Subject: Lidl Tuna Products.

from Lidl have been confirmed to be sourced from tuna purse seine fisheries that do not use FADs.

Reasons for concern:

- Purse seining is of particular environmental concern when carried out with FADs. FADs are floating devices which attract fish and other marine species (e.g. by lights or bait) to gather around the device. Some FADs have a fish detecting device which transmits to the fishing vessels details of the fish gathering under the device. Once enough fish have gathered, the purse seine boat encircles the area around the FADs with the net to catch everything under the FADs.
- Purse seining with FADs tends towards high levels of 'bycatch'. In particular, FADs are known to have associated bycatch of juvenile tuna, other pelagic fishes, as well as sharks and turtles some of which are on the International Union for Conservation of Nature (IUCN) red list of threatened species.
- The use of FADs with purse seines is regarded as "a critical conservation concern" and a "non-sustainable practice" due to their levels of bycatch.

References:

- Food and Agriculture Organisation of the UN (FAO), Fisheries and Aquaculture Department, 'Fishing Techniques – Tuna Purse Seining', at <http://www.fao.org/fishery/fishtech/40/en> (sourced from Ben-Yami, M., *Purse seining manual*, [1994], FAO and Fishing New Books Ltd.), date accessed: 19/11/10.
- Marsh, J., 2010, 'Monterey Bay aquarium seafood watch report - Skipjack tuna *Katsuwonus pelamis*', Monterey Bay Aquarium publications.
- Amandè, M-J., et al, 2008, 'Silky shark (*Carcharhinus falciformis*) bycatch in the French tuna purse-seine fishery of the Indian Ocean'. Indian Ocean Tuna Commission Working Party on Ecosystem and Bycatch (IOTC WPEB).
- Delgado de Molina, A. et al, 2005, 'Project on new FAD designs to avoid entanglement of by-catch species, mainly sea turtles and acoustic selectivity in the Spanish purse seine fishery in the Indian Ocean', Spanish Oceanographic Institute.
- International Union for Conservation of Nature and Natural Resources (IUCN), 'Red List of Threatened Species, at <http://www.iucnredlist.org/>, date accessed: 19/11/10. Note: Olive Ridley (*Lepidochelys olivacea*) sea turtle and Kemp's Ridley sea turtle (*Lepidochelys kempi*) have been listed as endangered on the IUCN red list of threatened species for several years. Silky Shark (*Carcharhinus falciformis*) is listed as 'near threatened' on the IUCN red list of threatened species.
- Monterey Bay Aquarium, Seafood Watch advice 2010, Yellowfin Tuna, purse seine/longline caught, worldwide except US Atlantic, at http://www.montereybayaquarium.org/cr/SeafoodWatch/web/sfw_factsheet.aspx?fid=209, date accessed 19/11/10.

Annex 1c – Marks and Spencer

Retailer:	Marks and Spencer.	
Products:	Frozen Raw Honduran King Prawns.	Fresh Chilli and Coriander King Prawns.
Claims:	<ul style="list-style-type: none"> • "From our environmentally friendly farm on the pacific coast of Honduras". • "Grown on selected farms in Southern honduras which operate to strict Marks and Spencer standards and care for the local ecology and community". 	

Photos:



Summary of concern:

At the time of writing, King Prawns are listed on the MCS's "fish to Avoid" list unless they are Organic/GAA/GlobalGAP accredited. Practices can vary greatly between individual farms so it is important that farms are benchmarked against a recognised, comprehensive third party environmental standard to verify or dispute any claims of environmental sustainability of environmental friendliness. Organic/GAA/GlobalGAP accreditation would be the most suitable independent accreditation currently available. These prawns are farmed to M&S standards but do not appear to be Organic/GAA/GlobalGAP accredited.

Evidence from retailer:³

- M&S were asked "Are the prawns farmed to any accredited standards? GAA/GlobalGAP etc? What does M&S assured mean?"
- In response M&S said the king prawns in this product are "Honduran farmed prawns" and that "M&S has a Code of Practice for the production of warm water shrimp which all our suppliers must adhere to and the farms are audited against this standard."
"In addition to the M&S Code of Practice, there are a number of key environmental and social aspects covered within our Prawn procurement activities in Honduras:-
- Conservation of the estuary water with low density prawn culture

³ Pers. comm. Email from Liz Williams, Food and Plan A Product PR Manager, Marks & Spencer, to Lauren Rowles, Keo Films Ltd, on 25/10/10. Subject: M&S - Plaice catch methods.

- *Conservation of the mangrove forest along the estuaries and enhancement of the mangrove surface in farms (ponds and canals)*
- *Conservation of wildlife (in particular water birds);*
- *Ensuring there is an employee benefits scheme in place;*
- *And providing local community support."*

Reasons for concern:

At the time of writing this report, King Prawns were listed on the MCS fish to avoid list (unless Organic/GAA/GlobalGAP accredited), on their Fishonline resource which states:

"REASON TO AVOID..... Avoid eating warm water prawns trawled from wild stocks. Also there are a number of concerns regarding prawn farming - Mangrove forests can and have been destroyed to create ponds for shrimp or prawn aquaculture with an estimated 38% of mangroves lost to shrimp farming. Farms can also rely on wild prawn stocks as a source of fry and broodstock for the production of larvae, both of which are trawled from the wild, a practice that can have high by-catch of other marine species, historically one of the highest of any fisheries. Wild fish can be depleted to produce food for farmed prawns. Pollution and saltwater from farms can pollute surrounding freshwater bodies and aquifers can be depleted to provide freshwater.

ADVICE / ALTERNATIVES

Only buy farmed prawns from suppliers that can ensure their product is sourced from farms that comply with environmental standards for mangrove protection and production as well as standards that address issues of pollution, water use, broodstock supply, feed sustainability and disease prevention. Organic production addresses most of these issues, Global Aquaculture Alliance and GlobalGAP certified producers also address some of these issues. Ask your fish supplier about the provenance of your farmed prawns. See Advanced search for advice on making the best choice. Other species to try would be coldwater prawns from the Northeast Arctic or MSC certified langoustine from Loch Torridon. Both of these species appear on our fish to eat list."

References:

- Marine Conservation Society (MCS), Fishonline resource, Fish to Avoid, Tiger and King Prawn, at <http://www.fishonline.org/advice/avoid/?item=23>, date accessed: 19/11/10.

Retailer:	Marks and Spencer (M&S).	
Products:	Breaded cod fillet and straight cut oven chips.	Fish and chips meal for one.
Claims:	<ul style="list-style-type: none"> • "Our sustainably sourced cod..." • "Traditional favourites sustainably sourced Cod" and M&S's own logo. 	
Photos:		
Summary of concern:	<p>Some of the cod for these products comes from Canadian stock in NAFO Division 3Ps, which in our opinion (with regard to the scientific evidence below) should not be considered environmentally 'sustainable' according to the precautionary approach or "sustainably sourced" since the stock is declining, only just above limit reference points and needs to be rebuilt to take a precautionary approach.</p>	
Evidence from retailer:⁴	<p>M&S states that: "[some of the cod in these products comes from the] <i>NW Atlantic-FAO 21- Canada- line caught, bottom trawl... Canadian Cod comes from NAFO Division 3Ps</i>".</p>	
Reasons for concern:	<p>According to the most recent Canadian government report available on this cod stock in NAFO Division 3Ps, "<i>Survey SSB has been decreasing in recent years and in 2008 was just above the limit reference point. If management is to be consistent with the Precautionary Approach, catches should be reduced compared to recent levels, and greater priority should be given to increasing SSB. If the management goal is to stop the current decline in offshore biomass then a reduction in TAC to 10,000 t is considered the minimum necessary, notwithstanding the uncertainties about survivorship and absolute size of biomass. If the management objective is to ensure growth in offshore biomass, then a greater reduction is considered necessary</i>".</p>	
References:	<ul style="list-style-type: none"> • Department of Fisheries and Oceans (DFO), Canada, 2009, <i>Stock Assessment of Subdivision 3Ps cod</i>. DFO Canadian Scientific Advisory Secretariat, Scientific Advisory Report 2009/008, Newfoundland and Labrador Region. 	

⁴ Pers. comm. Email from Liz Williams, Food and Plan A Product PR Manager, Marks & Spencer, to Lauren Rowles, Keo Films Ltd, on 25/10/10. Subject: M&S - Plaice catch methods and Subject: A few more questions, on 17/11/10.

Retailer:	Marks and Spencer (M&S).	
Products:	Smoked Haddock with cheese sauce	2 Breaded Haddock portions
Claims:	"Our sustainably sourced haddock..."	
Photos:		
Summary of concern:	Some of the haddock for this product comes from Icelandic stock, which in our opinion should not be considered environmentally 'sustainable' according to the precautionary approach and thus not "sustainably sourced".	
Evidence from retailer: ⁵	M&S state that: "[the haddock in this product is from] <i>catch area: NE Atlantic, Country of origin: Iceland, Sea area (caught in): FAO 27, ICES:Va, Catch method: line caught, bottom trawl</i> ".	
Reasons for concern:	<ul style="list-style-type: none">The most recent advice from ICES (June 2010) classifies this stock (ICES Area Va) as being fished at an unsustainable level, as fishing levels are above the precautionary level ('Fpa'). ICES state that: "<i>When fishing mortality is estimated to be above Fpa, ICES advises management action to reduce it to Fpa. Such advice is given even if the spawning biomass is above Bpa because fishing mortalities above Fpa are considered unsustainable.</i>"	

⁵ Pers. comm. Email from Liz Williams, Food and Plan A Product PR Manager, Marks & Spencer, to Lauren Rowles, Keo Films Ltd, on 25/10/10. Subject: M&S - Plaice catch methods and Subject: A few more questions, on 17/11/10.

- Information from the Icelandic government states: "*In [sic] medium term there is some risk of the spawning stock going below historical low, how [sic] much depends on fishing effort and individual growth.*"

References:

- International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 2, pp. 16 – 19.
- Icelandic Government, 'English summary of the State of Marine Stocks in Icelandic waters 2009/2010 –Prospects for the Quota Year 2010/2011', report available at <http://www.hafro.is/Astand/2010/35-engl-sum.PDF>, pp. 167 - 172.
- International Convention for the Exploration of the Seas (ICES), 2009, 'Report of the ICES Advisory Committee, 2009', Book 1, pp. 1 - 172.

Annex 1d – Princes

Retailer:	Princes.		
Products:	Tuna bites in brine carton.	Tinned Tuna chunks in brine.	Tinned Yellowfin tuna steak in olive oil.
Claims:	<i>"Dolphin friendly" logo and statement "Princes is fully committed to fishing methods which protect the marine environment and marine life".</i>		

Photos:



Summary of concern:

There are no fishing methods which can 'protect' the marine environment and marine life. In any case, some of this tuna product may have been caught by purse seine fisheries using FADs and there is no evidence that this product has been sourced from a purse seine fishery that does not use FADs.

Evidence from retailer:⁶

Princes stated that:

- *"The tuna bites and yellowfin steak products that you refer to have been delisted and are no longer sold by Princes."*
- *"The company sources tuna caught by purse seine and pole and line methods. Longline and drift net methods are excluded from Princes specifications. The majority of the tuna sourced by Princes is skipjack which is used in the tuna"*

⁶ Pers. comm. Email from Charles Tattersall, Princes, to Lauren Rowles, Keo Films Ltd, on 11/11/10. Subject: Princes Tuna.

chunks product. Princes sources tuna from the Indian, Pacific and Atlantic Oceans."

Note: since purchasing these products, Princes have indicated that they have been delisted. However we have referred to them here as examples of misleading claims.

Reasons for concern:

- Purse seining is of particular environmental concern when carried out with FADs. FADs are floating devices which attract fish and other marine species (e.g. by lights or bait) to gather around the device. Some FADs have a fish detecting device which transmits to the fishing vessels details of the fish gathering under the device. Once enough fish have gathered, the purse seine boat encircles the area around the FADs with the net to catch everything under the FADs.
- Purse seining with FADs tends towards high levels of 'bycatch'. In particular, FADs are known to have associated bycatch of juvenile tuna, other pelagic fishes, as well as sharks and turtles some of which are on the International Union for Conservation of Nature (IUCN) red list of threatened species.
- The use of FADs with purse seines is regarded as "a critical conservation concern" and a "non-sustainable practice" due to their levels of bycatch.

References:


- Food and Agriculture Organisation of the UN (FAO), Fisheries and Aquaculture Department, 'Fishing Techniques – Tuna Purse Seining', at <http://www.fao.org/fishery/fishtech/40/en> (sourced from Ben-Yami, M., *Purse seining manual*, [1994], FAO and Fishing News Books Ltd.), date accessed: 19/11/10.
- Marsh, J., 2010, 'Monterey Bay aquarium seafood watch report - Skipjack tuna Katsuwonus pelamis', Monterey Bay Aquarium publications.
- Amandè, M-J., et al, 2008, 'Silky shark (*Carcharhinus falciformis*) bycatch in the French tuna purse-seine fishery of the Indian Ocean'. Indian Ocean Tuna Commission Working Party on Ecosystem and Bycatch (IOTC WPEB).
- Delgado de Molina, A. et al, 2005, 'Project on new FAD designs to avoid entanglement of by-catch species, mainly sea turtles and acoustic selectivity in the Spanish purse seine fishery in the Indian Ocean', Spanish Oceanographic Institute.
- International Union for Conservation of Nature and Natural Resources (IUCN), 'Red List of Threatened Species, at <http://www.iucnredlist.org/>, date accessed: 19/11/10. Note: Olive Ridley (*Lepidochelys olivacea*) sea turtle and Kemp's Ridley sea turtle (*Lepidochelys kempi*) have been listed as endangered on the IUCN red list of threatened species for several years. Silky Shark (*Carcharhinus falciformis*) is listed as 'near threatened' on the IUCN red list of threatened species.
- Monterey Bay Aquarium, Seafood Watch advice 2010, Yellowfin Tuna, purse seine/longline caught, worldwide except US Atlantic, at http://www.montereybayaquarium.org/cr/SeafoodWatch/web/sfw_factsheet.aspx?fid=209, date accessed 19/11/10.

Annex 1e – Sainsbury's

Retailer:	Sainsbury's
Products:	"Taste the difference" line caught 4 haddock loins.
Claims:	"We use only line caught haddock from the clear waters of Norway and Iceland. So they're responsibly fished and you get the best, sweetest haddock."
Photos:	
Summary of concern:	<p>Although the haddock is caught by a relatively sustainable method, some of the haddock for this product comes from the Icelandic stock, which in our opinion, based on the following evidence, could not be considered environmentally 'sustainable' according to the precautionary approach and thus not "responsibly fished".</p>
Evidence from retailer:⁷	<p>According to Sainsbury's "<i>Haddock are line caught from the Icelandic fishery. We have worked with our supplier to ensure that bird bycatch mitigation measures are employed on line capture vessels supplying Sainsbury's products (e.g. gas scarers, line weighting and streamers).</i>"</p>
Reasons for concern:	<ul style="list-style-type: none"> The most recent advice from ICES (June 2010) classifies this stock (ICES Area Va) as being fished at an unsustainable level, as fishing levels are above the precautionary limit ('Fpa'). ICES state that: "<i>When fishing mortality is estimated to be above Fpa, ICES advises management action to reduce it to Fpa. Such advice is given even if the spawning biomass is above Bpa because fishing mortalities above Fpa are considered unsustainable.</i>" Information from the Icelandic government states: "<i>In [sic] medium term there is some risk of the spawning stock going below historical low, how [sic] much depends on fishing effort and individual growth.</i>"
References:	<ul style="list-style-type: none"> International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 2, pp. 16 – 19.

⁷ Pers. comm. Email from Tom Parker, Sainsbury's, to Lauren Rowles, Keo Films Ltd, on 25/10/10. Subject: Sainsbury's Fish Products.

- Icelandic Government, 'English summary of the State of Marine Stocks in Icelandic waters 2009/2010 –Prospects for the Quota Year 2010/2011', report available at <http://www.hafro.is/Astand/2010/35-engl-sum.PDF>, pp. 167 - 172.
- International Convention for the Exploration of the Seas (ICES), 2009, 'Report of the ICES Advisory Committee, 2009', Book 1, pp. 1 - 172.

Retailer:	Sainsbury's.
Products:	"Taste the difference" jumbo king prawns.
Claims:	"Responsibly sourced".
Photos:	
Summary of concern:	<p>At the time of writing, King Prawns were listed on the MCS's "<i>fish to avoid</i>" list (unless they are Organic/GAA/GlobalGAP accredited). Practices can vary greatly between individual farms so it is important that farms are benchmarked against a recognised, comprehensive environmental standard to verify or dispute any claims of environmental sustainability. Organic/GAA/GlobalGAP certification would be the most suitable independent accreditation currently available. These prawns are farmed to Sainsbury's standards but do not appear to be Organic/GAA/GlobalGAP accredited. Therefore the claim that they are 'responsibly sourced' has no independent accreditation addressing environmental concerns.</p>
Evidence from retailer:⁸	<p>According to Sainsbury's "<i>These prawns are farmed in Indonesia and Ecuador. We have been working with our suppliers to develop a responsibly sourced farmed prawn which meets our requirements for good environmental practice (including environmental impact assessments, effluent standards in discharge water and mangrove management) and responsible sources of feedstuff. Responsible sourcing of fishmeal and oil for use in aquaculture feeds is a priority for Sainsbury's farmed fish.</i></p> <p><i>We have worked actively with our suppliers, Sustainable Fisheries Partnership and the International Fishmeal and Fish Oil Organisation (IFFO) to raise supplier awareness and standards in this area. We have also funded the development of a responsible sourcing standard for fishmeal specifically aimed at Southeast Asia farming operations."</i></p>

⁸ Pers. comm. Email from Tom Parker, Sainsbury's, to Lauren Rowles, Keo Films Ltd, on 25/10/10. Subject: Sainsbury's Fish Products.

Reasons for concern:

At the time of writing, King Prawns were listed on the MCS fish to avoid list (unless Organic/GAA/GlobalGAP certified) on their Fishonline resource. It states:

"REASON TO AVOID..... Avoid eating warm water prawns trawled from wild stocks. Also there are a number of concerns regarding prawn farming - Mangrove forests can and have been destroyed to create ponds for shrimp or prawn aquaculture with an estimated 38% of mangroves lost to shrimp farming. Farms can also rely on wild prawn stocks as a source of fry and broodstock for the production of larvae, both of which are trawled from the wild, a practice that can have high by-catch of other marine species, historically one of the highest of any fisheries. Wild fish can be depleted to produce food for farmed prawns. Pollution and saltwater from farms can pollute surrounding freshwater bodies and aquifers can be depleted to provide freshwater.


ADVICE / ALTERNATIVES

Only buy farmed prawns from suppliers that can ensure their product is sourced from farms that comply with environmental standards for mangrove protection and production as well as standards that address issues of pollution, water use, broodstock supply, feed sustainability and disease prevention. Organic production addresses most of these issues, Global Aquaculture Alliance and GlobalGAP certified producers also address some of these issues. Ask your fish supplier about the provenance of your farmed prawns. See Advanced search for advice on making the best choice. Other species to try would be coldwater prawns from the Northeast Arctic or MSC certified langoustine from Loch Torridon. Both of these species appear on our fish to eat list".

Reference:

- Marine Conservation Society (MCS), Fishonline resource, Fish to Avoid, Tiger and King Prawn, at <http://www.fishonline.org/advice/avoid/?item=23>, date accessed: 19/11/10.

Annex 1f – Tesco

Retailer:	Tesco.			
Products:	Haddock (from wetfish counter).	Fresh 2 smoked haddock fish cakes.	Fresh breaded haddock fillets.	Fresh smoked haddock fillets.
Claims:	<ul style="list-style-type: none"> • "Responsibly sourced from well managed fisheries". • "Responsibly sourced". 			
Photos:				
Summary of concern:	<p>Some of the haddock for this product comes from Icelandic stock, which in our opinion, based on evidence below, should not be considered environmentally 'sustainable' using the precautionary approach and thus not responsibly sourced from well managed fisheries.</p>			
Evidence from retailer:⁹	<p>Tesco haddock from: "Icelandic fisheries (FAO 27) and Norwegian fisheries (Norwegian North East Arctic) that are well managed and having growing stocks".</p>			
Reasons for concern:	<ul style="list-style-type: none"> • The most recent advice from ICES (June 2010) classifies this stock (ICES Area 			

⁹ Pers. comm. Email from Treeva Fenwick, Tesco Press Office, to Lauren Rowles, Keo Films Ltd, on 15/11/10. Subject: Answers document.

Va) as being fished at an unsustainable level, as fishing levels are above the precautionary limit ('Fpa'). ICES state that: "*When fishing mortality is estimated to be above Fpa, ICES advises management action to reduce it to Fpa. Such advice is given even if the spawning biomass is above Bpa because fishing mortalities above Fpa are considered unsustainable.*"

- Information from the Icelandic government states: "*In [sic] medium term there is some risk of the spawning stock going below historical low, how [sic] much depends on fishing effort and individual growth.*"

References:

- International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 2, pp. 16 – 19.
- Icelandic Government, 'English summary of the State of Marine Stocks in Icelandic waters 2009/2010 –Prospects for the Quota Year 2010/2011', report available at <http://www.hafro.is/Astand/2010/35-engl-sum.PDF>, pp. 167 - 172.
- International Convention for the Exploration of the Seas (ICES), 2009, 'Report of the ICES Advisory Committee, 2009', Book 1, pp. 1 - 172.

Retailer:	Tesco.
Products:	Megrim sole (from wet fish counter).
Claims:	" <i>Responsibly sourced from well managed fisheries</i> ".
Photo:	
Summary of concern:	<p>Scientific advice is that the status of this stock and fishing levels are unknown and a reduction in fishing effort is recommended. Therefore, in our opinion, it could not be considered to be responsibly sourced from a "<i>well managed</i>" fishery.</p>
Evidence from retailer: ¹⁰	<p>According to Tesco "<i>megrim sole is sourced from the well managed south western UK fisheries using a beam trawl</i>".</p>
Reasons for concern:	<p>According to the most recent ICES advice for this stock, the spawning stock biomass and fishing mortality in relation to precautionary levels is unknown. The EU policy paper on fisheries management (17 May 2010, COM(2010) 241) classifies this stock under category 7 or IV.4. The ICES advice for a category 7 stock is: "<i>State of the stock not known precisely and STECF advises to reduce fishing effort...The TAC should be reduced by up to 15% and STECF should be asked to advise on the appropriate level of effort.</i>"</p>
References:	<ul style="list-style-type: none"> • International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 5, pp. 115 – 120. • European Commission, 'Communication from the Commission - Consultation on Fishing Opportunities for 2011', 17 May 2010, COM(2010) 241.

¹⁰ Pers. comm. Email from Treeva Fenwick, Tesco Press Office, to Lauren Rowles, Keo Films Ltd, on 15/11/10. Subject: Answers document.

Retailer:	Tesco.					
Products:	Fresh Tesco salmon fillets.	Fresh Sweet cure roasted salmon fillets with dark treacle.	Fresh seabass (from wet counter).	Fresh seabream (from wet counter).	Market Value trout fillets.	Rainbow trout (from the wetfish counter).
Claims:	<ul style="list-style-type: none"> "Responsibly farmed". "Responsibly sourced from well managed farms". 					

Photos:



Summary of concern:

Where a retailer claims that fish products are from "*responsibly farmed*", it is implied that there is a standard of farming which can be distinguished from other fish farms. Scientific information for fish farms is not available in the same way as for wild fish, because wild fish belong to a 'stock' which is harvested by many fisheries and can be

assessed as one stock, whereas each fish farm must be assessed individually. Practices can vary greatly between individual farms so it is important that farms are benchmarked against a recognised, comprehensive environmental standard to verify or dispute any claims of environmental sustainability of environmental friendliness. The only reasonable way to ascertain whether farms are responsibly / sustainably managed is if they are independently accredited by a global benchmark. Organic/GAA/GlobalGAP accreditation would also be suitable independent accreditation currently available. If the product is not Organic/GAA/GlobalGAP accredited it is very difficult to verify these claims.

Evidence from retailer:¹¹

Tesco states that:

- Regarding the salmon: *"A number of the farms contracted to supply Tesco have attained GlobalGAP certification and others are working towards this. All farms meet our Tesco Code of Practice and have been independently audited against this; our Code of Practice covers GlobalGAP requirements and goes beyond in some areas.";* and *"The salmon for our sweet cure roasted salmon fillets is sourced from the same sources as our fresh salmon fillets."*
- The seabass and seabream are *"farmed in Turkey by leading producers. The farms are independently audited to ensure compliance with our own aquaculture Codes of Practice. Tesco and our suppliers have been very actively engaged in the development of independent third party standards for bass and bream and look forward to the launch of the new GlobalGAP finfish standard in 2011. It is our intention to adopt this new standard when it is introduced and we will assist our suppliers to attain certification."*
- The rainbow trout *"...all farms are accredited either to the Quality Trout UK standard or the equivalent Irish scheme (Certified Quality trout). In addition all farms are independently audited to ensure compliance with our own aquaculture code of practice."* According to the Irish sea fisheries board, the Irish certified quality trout mark *"can only be used by Certified Companies. Presence of the mark assures that the trout has been hatched, raised, harvested and packed under the strictest levels of food hygiene. The mark ensures that the product can be fully traced from hatchery to packing."*

Reasons for concern:

- There are a number of environmental concerns associated with open pen salmon farming, such as impacts of escapees, diseases transfer, and use of chemical treatments, so it is important the individual farms are certified as addressing this issues.
- The seabass and seabream are farmed in Turkey, where there are environmental concerns for such farms as they use open sea cages and this species relies on a diet of wild fish.
- The rainbow trout in this product is accredited to Quality Trout UK standards or Irish Quality Trout (IQT) standards, which address welfare issues in trout farms,

¹¹ Pers. comm. Email from Treeva Fenwick, Tesco Press Office, to Lauren Rowles, Keo Films Ltd, on 15/11/10. Subject: Answers document.

however neither address all the environmental issues concerns of farmed trout, including feed sustainability.

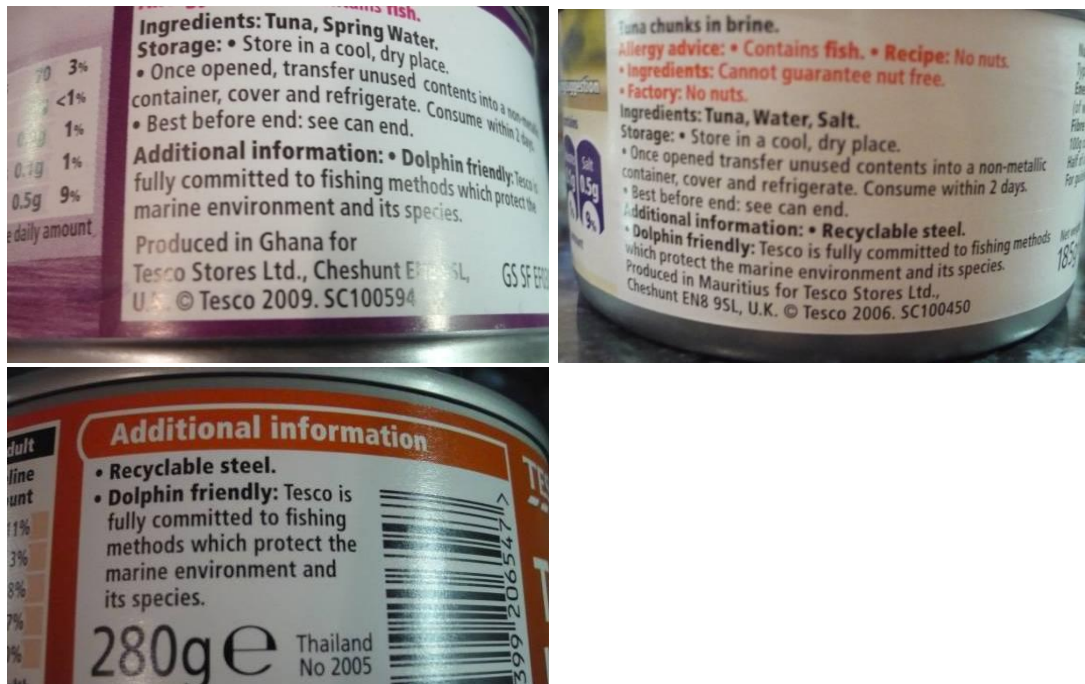
- Although Tesco states that all its farms are independently audited against Tesco's own code of practice, the claim of responsibly farmed currently does not appear to have the recognised verification (Organic or certified by the Global Aquaculture Alliance or GlobalGAP) addressing the environmental concerns.

References:

- Marine Conservation Society (MCS), Fishonline resource, Atlantic Salmon, at http://www.fishonline.org/search/advanced/?step=5&fish_id=86&production_method_id=2&capture_areas=fao_27&stock_detail=YToyOntzOjE3OiJzdG9ja19kZXRhYWxldGV4dCI7czo2OiJOY3J3YXkiO3M6MTc6InN0b2NrX2RldGFpbF9pY2VzIjtzOjE0OiJOY3QgYXBwbGljYWJsZSI7fQ%3D%3D, date accessed: 19/11/10.
- Marine Conservation Society (MCS), Fishonline resource, Farmed Seabass (and Seabream), at http://www.fishonline.org/search/advanced/?step=3&fish_id=91&production_method_id=2, date accessed: 19/11/10.
- Marine Conservation Society (MCS), Fishonline resource, farmed Rainbow Trout, at http://www.fishonline.org/search/simple/?fish_id=78, date accessed: 19/11/10.
- Irish Sea Fisheries Board (BIM), Environment and Sustainability, Quality Schemes, Irish Quality Trout (IQT), at http://www.bim.ie/templates/text_content.asp?node_id=262, date accessed: 19/11/10.

Retailer:	Tesco.		
Products:	Tinned Tesco tuna chunks in spring water.	Tinned Tuna chunks in brine.	Tuna and mixed bean salad.
Claims:	<i>"Dolphin friendly: Tesco is fully committed to fishing methods which protect the marine environment and its species."</i>		

Photos:



Summary of concern:

There are no fishing methods which protect the marine environment and its species. This tuna comes from purse seine fisheries and there is considerable concern from scientific and other commentators about tuna fishing with FADs and the bycatch of species (other than dolphin) associated with such fishing methods. For example, Greenpeace & Monterey Bay Aquarium consider that this type of fishing is not environmentally friendly.

Evidence from retailer:¹²

Tesco stated that:

- Regarding the tuna in spring water, it is: *"Canned in Ghana and Mauritius, so mainly [sourced from] N and S Atlantic, Indian Ocean and Western Pacific. Purse seine caught. All skipjack."*
- Regarding the tuna in brine, it is: *"Canned in Mauritius, Seychelles and Ghana, so mainly [sourced from] Indian Ocean and N. and S Atlantic, then W. Pacific. Purse seine caught. All skipjack."*
- Regarding the tuna and mixed bean salad, it is: *"Canned in Thailand so mainly [caught in the] W. Pacific and Indian Ocean. Purse seine caught. All*

¹² Pers. comm. Email from Treeva Fenwick, Tesco Press Office, to Lauren Rowles, Keo Films Ltd, on 15/11/10. Subject: Answers document.

skipjack."

Note: Although we did not receive direct confirmation from Tesco that FADs are used in these fisheries, evidence received from KEO films and Greenpeace indicates that the purse seine fisheries in Ghana are using FADs and do have significant bycatch (including sharks, turtles, dolphins). There is nothing to indicate that the use of FADs and resulting bycatch does not occur in the other purse seine fisheries mentioned by Tesco, so Tesco's response remains unsatisfactory.


Reasons for concern:

- Purse seining is of particular environmental concern when carried out with FADs. FADs are floating devices which attract fish and other marine species (e.g. by lights or bait) to gather around the device. Some FADs have a fish detecting device which transmits to the fishing vessels details of the fish gathering under the device. Once enough fish have gathered, the purse seine boat encircles the area around the FADs with the net to catch everything under the FADs.
- Purse seining with FADs tends towards high levels of 'bycatch'. In particular, FADs are known to have associated bycatch of juvenile tuna, other pelagic fishes, as well as sharks and turtles some of which are on the International Union for Conservation of Nature (IUCN) red list of threatened species.
- The use of FADs with purse seines is regarded as "a critical conservation concern" and a "non-sustainable practice" due to their levels of bycatch.

References:

- Food and Agriculture Organisation of the UN (FAO), Fisheries and Aquaculture Department, 'Fishing Techniques – Tuna Purse Seining', at <http://www.fao.org/fishery/fishtech/40/en> (sourced from Ben-Yami, M., *Purse seining manual*, [1994], FAO and Fishing New Books Ltd.), date accessed: 19/11/10.
- Marsh, J., 2010, 'Monterey Bay aquarium seafood watch report - Skipjack tuna *Katsuwonus pelamis*', Monterey Bay Aquarium publications.
- Amandè, M-J., et al, 2008, 'Silky shark (*Carcharhinus falciformis*) bycatch in the French tuna purse-seine fishery of the Indian Ocean'. Indian Ocean Tuna Commission Working Party on Ecosystem and Bycatch (IOTC WPEB).
- Delgado de Molina, A. et al, 2005, 'Project on new FAD designs to avoid entanglement of by-catch species, mainly sea turtles and acoustic selectivity in the Spanish purse seine fishery in the Indian Ocean', Spanish Oceanographic Institute.
- International Union for Conservation of Nature and Natural Resources (IUCN), 'Red List of Threatened Species, at <http://www.iucnredlist.org/>, date accessed: 19/11/10. Note: Olive Ridley (*Lepidochelys olivacea*) sea turtle and Kemp's Ridley sea turtle (*Lepidochelys kempi*) have been listed as endangered on the IUCN red list of threatened species for several years. Silky Shark (*Carcharhinus falciformis*) is listed as 'near threatened' on the IUCN red list of threatened species.
- Monterey Bay Aquarium, Seafood Watch advice 2010, Yellowfin Tuna, purse seine/longline caught, worldwide except US Atlantic, at http://www.montereybayaquarium.org/cr/SeafoodWatch/web/sfw_factsheet.aspx?fid=209, date accessed 19/11/10.
- Greenpeace, Tinned Tuna's secret catch (in press).

Annex 1g – The Cooperative

Retailer:	The Cooperative.
Products:	Skipjack tuna steak in sunflower oil.
Claims:	<ul style="list-style-type: none"> • "From responsibly fished sources" • "All our fish is from responsibly fished sources caught using methods that minimize damage to the marine environment and other fish."
Photos:	
Summary of concern:	<p>These products contain skipjack tuna caught with Purse seines that may be using Fish Aggregating Devices (FADs). There is considerable concern from scientific and other commentators about tuna fishing with FADs and the bycatch of species (other than dolphin) associated with such fishing methods. For example, Greenpeace & Monterey Bay Aquarium consider that this type of fishing with FADs is not environmentally friendly.</p> <p>Purse seining with FADs is not the most responsible method of catching skipjack tuna; for example pole & line would be more responsible and goes further to minimise damage to the environment. The Cooperative does have a decision tree which includes criteria on bycatch of fish and non fish including the use of exclusion devices when bycatch levels are above a certain percentage. It is likely that this is what the Cooperative is referring to in their statement of fishing methods that "minimize damage to the marine environment and other fish." However there are other more responsible methods to catch skipjack in this area.</p>
Evidence from retailer: ¹³	<p>In relation to this product and general tuna policy, the Cooperative stated:</p> <ul style="list-style-type: none"> • "Currently the Skipjack Steaks in Sunflower Oil are sourced by purse seiners who may be using FADS. The Skipjack chunks in Sunflower Oil are currently sourced using pole & line. The fishery must use exclusion devices if the by-catch is [a

¹³ Pers. comm. Email from Andrew Nicholson, The Co-operative Food Head Office, to Lauren Rowles, Keo Films Ltd on 19/11/10, 30/11/10, 01/12/10 & 06/12/10. Subject: Channel 4 documentary.

certain percentage]. *The supplier has to detail the non-fish bycatch and the exclusion devices used. These will then be assessed individually."*

- *"The Co-operative takes fish sustainability very seriously and is committed to the maintenance of an own brand range of fishery products which gives the consumer a wide choice supported by informed, accurate and highly visible information to enable them to make responsible sourcing a factor in their purchasing decisions should they wish to do so. We recognize the necessity to source tuna species in a sustainable way to preserve wild stock and maintain biodiversity, while ensuring total traceability and transparent origin."*
- *"All Co-operative Brand canned tuna is sourced from healthy stocks of Skipjack tuna (*Katsuwonus pelamis*), managed by recognized local or international commissions, in under- or fully- exploited state according to the Maximum Sustainable Yield (MSY) principles. Although we will always give first consideration when sourcing tuna, to suppliers using selective fishing practices, such as hand line or pole and line, we do allow the use of all selective fishing techniques designed to minimise their effect on other species, marine animals and birds, as well as the ecosystem. These include selected purse seine systems."*
- *"All Co-operative canned Tuna is caught by methods that conform to Earth Island Institute (EII) Dolphin Safe standards. Our sources must be able to demonstrate the respect of these environmental values and legality:*
 - *Destructive catching methods, specifically bottom trawling and drift nets are not acceptable;*
 - *Conscious effort to reduce bycatch of juveniles and unwanted species by using non intrusive repulsion measures and larger mesh net;*
 - *Commitment never to capture mammals, birds or turtles under the EII guidelines;*
 - *Commitment to eliminate and release from the catch any unwanted species alive and unharmed where possible;*
 - *No fishing in areas recognized as giving high levels of bycatch;*
 - *Reject of any shark finning practices by members of fishing crew;*
- *"To confirm our specification for Tuna we are party to an agreement whereby the international conservation body Earth Island Institute monitor these claims. The Co-operative also supports the use of supply chain traceability as a means of verifying the provenance of the seafood in our own brand range. All Co-operative tuna is fully traceable to the catching vessel (or group of catching vessels if they are small scale artisanal boats)."*
- *"Any processor wishing to supply the Co-operative with a fish based product, must complete a sustainability checklist (copy attached) which details all the relevant scientific data for the specific fish they wish to supply. A separate checklist must be completed for each fish species, each catch area and each catch method. We will then use this information to determine if a particular fish species, caught in a specific fishery, by a specific catch method, is Ok for us to sell. We have done this with each supplier of canned Skipjack tuna and that is what we mean by selected purse seine systems. In relation to the use of FADs, yes these purse seine systems will use FADs the same as all other tuna catching system do, including pole & line and hand line fisheries. Our supplier is a founder member of the International Seafood Sustainability Foundation (ISSF) together with WWF. The initial focus of*

the ISSF is to facilitate the long term conservation and sustainable use of tuna and has helped commission a major study on the purse seine catch method in association with FADs."


Reasons for concern:

- Purse seining is of particular environmental concern when carried out with FADs. FADs are floating devices which attract fish and other marine species (e.g. by lights or bait) to gather around the device. Some FADs have a fish detecting device which transmits to the fishing vessels details of the fish gathering under the device. Once enough fish have gathered, the purse seine boat encircles the area around the FADs with the net to catch everything under the FADs.
- Purse seining with FADs tends towards high levels of 'bycatch'. In particular, FADs are known to have associated bycatch of juvenile tuna, other pelagic fishes, as well as sharks and turtles some of which are on the International Union for Conservation of Nature (IUCN) red list of threatened species.
- The use of FADs with purse seines is regarded as "a critical conservation concern" and a "non-sustainable practice" due to their levels of bycatch.

References:

- Food and Agriculture Organisation of the UN (FAO), Fisheries and Aquaculture Department, 'Fishing Techniques – Tuna Purse Seining', at <http://www.fao.org/fishery/fishtech/40/en> (sourced from Ben-Yami, M., *Purse seining manual*, [1994], FAO and Fishing New Books Ltd.), date accessed: 19/11/10.
- Marsh, J., 2010, 'Monterey Bay aquarium seafood watch report - Skipjack tuna *Katsuwonus pelamis*', Monterey Bay Aquarium publications.
- Amandè, M-J., et al, 2008, 'Silky shark (*Carcharhinus falciformis*) bycatch in the French tuna purse-seine fishery of the Indian Ocean'. Indian Ocean Tuna Commission Working Party on Ecosystem and Bycatch (IOTC WPEB).
- Delgado de Molina, A. et al, 2005, 'Project on new FAD designs to avoid entanglement of by-catch species, mainly sea turtles and acoustic selectivity in the Spanish purse seine fishery in the Indian Ocean', Spanish Oceanographic Institute.
- International Union for Conservation of Nature and Natural Resources (IUCN), 'Red List of Threatened Species, at <http://www.iucnredlist.org/>, date accessed: 19/11/10. Note: Olive Ridley (*Lepidochelys olivacea*) sea turtle and Kemp's Ridley sea turtle (*Lepidochelys kempi*) have been listed as endangered on the IUCN red list of threatened species for several years. Silky Shark (*Carcharhinus falciformis*) is listed as 'near threatened' on the IUCN red list of threatened species.

Annex 1h – Waitrose

Retailer:	Waitrose.
Product:	Haddock en croute.
Claim:	" <i>Sustainably sourced</i> ".
Photos:	
Summary of concern:	<p>Some of the haddock for this product comes from Icelandic stock, which in our opinion, based on evidence below, should not be considered environmentally 'sustainable' using the precautionary approach and thus not "<i>sustainably sourced</i>".</p>
Evidence from retailer: ¹⁴	<ul style="list-style-type: none"> Waitrose were asked "<i>Frozen haddock en croute – Where exactly is it from (ICES area) & how is it caught?</i>" In response Waitrose said that the: "<i>Catch area is the North East Atlantic FAO 27 and more specifically our haddock is caught from Icelandic waters and is Line Caught (long line method).</i>" Waitrose also said: "<i>Haddock: The long-line caught Haddock is from Icelandic stock only (not Greenland).</i>"
Reasons for concern:	<ul style="list-style-type: none"> The most recent advice from ICES (June 2010) classifies this stock (ICES Area Va) as being fished at an unsustainable level, as fishing levels are above the precautionary limit ('Fpa'). ICES state that: "<i>When fishing mortality is estimated to be above Fpa, ICES advises management action to reduce it to Fpa. Such advice is given even if the spawning biomass is above Bpa because fishing mortalities above Fpa are considered unsustainable.</i>" Information from the Icelandic government states: "<i>In [sic] medium term there is some risk of the spawning stock going below historical low, how [sic] much depends on fishing effort and individual growth.</i>"
References:	<ul style="list-style-type: none"> International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 2, pp. 16 – 19. Icelandic Government, 'English summary of the State of Marine Stocks in Icelandic waters 2009/2010 –Prospects for the Quota Year 2010/2011', report available at http://www.hafro.is/Astand/2010/35-engl-sum.PDF, pp. 167 - 172. International Convention for the Exploration of the Seas (ICES), 2009, 'Report of the ICES Advisory Committee, 2009', Book 1, pp. 1 - 172.

¹⁴ Pers. comm. Email from Gill Smith, Waitrose, to Lauren Rowles, Keo Films Ltd, on 25/10/10 and 02/11/10. Subject: Query on fish products for new Hugh Fearnley Whittingstall show - deadline 22nd.

Retailer:	Tesco.
Product:	Fresh cooked and peeled King prawns.
Claim:	" <i>Responsibly farmed</i> ".
Photos:	

Summary of concern:

At the time of writing, King Prawns are listed on the Marine Conservation Society's "fish to Avoid" list unless they are Organic/ GAA/GlobalGAP certified. Practices can vary greatly between individual farms so it is important that farms are benchmarked against a recognised, comprehensive environmental standard to verify or dispute any claims of environmental sustainability of environmental friendliness. GAA, GlobalGAP, and Organic accreditation would be suitable independent accreditation currently available.

Evidence from retailer¹⁵:

Tesco stated: "*Our king prawns/cooked and peeled king prawns are from Thailand, Indonesia & china approved by Tesco code of practices & 3rd party audited. Tesco king prawns are farmed either in Thailand or Vietnam. All farms are certified to Best Aquaculture practice standards (BAP) by the Global Aquaculture Alliance...*"

Why the evidence satisfies the claim:


These prawns are Best Aquaculture Practices certified by GAA, thus benchmarked against environmental standards, which in our opinion verify the claim of responsibly farmed relative to those that are non Organic/ GAA/GlobalGAP certified.

References:


- Marine Conservation Society (MCS), Fishonline resource, Fish to Avoid, Tiger and King Prawn, at <http://www.fishonline.org/advice/avoid/?item=23>, date accessed: 19/11/10.
- Marine Conservation Society (MCS), Fishonline resource, King Prawn, at [http://www.fishonline.org/search/advanced/?step=5&fish_id=184&production_meth od_id=2&capture_areas=farmed_certified&stock_detail=YToyOntzOjE3OiJzdG9 ja19kZXRhWx f dGV4dCI7czoOToiKEFDQykgQmVzdCBBcXVhY3Vs dHVyZSBQcmFjdGljZSAoQkFQKQ0KIjtzOjE3OiJzdG9ja19kZXRhWx faWNlcyI7czoyNzoiU0UgQXNpY SBhb mOqTGF0aW4qOW1lcmljYO0KIjt9](http://www.fishonline.org/search/advanced/?step=5&fish_id=184&production_method_id=2&capture_areas=farmed_certified&stock_detail=YToyOntzOjE3OiJzdG9ja19kZXRhYWxfZGV4dCI7czoOToiKEFDQykgQmVzdCBBcXVhY3Vs dHVyZSBQcmFjdGljZSAoQkFQKQ0KIjtzOjE3OiJzdG9ja19kZXRhYWxfZW NlcyI7czoyNzoiU0UgQXNpYSBhb mOqTGF0aW4qOW1lcmljYO0KIjt9), date accessed: 19/11/10.

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¹⁶ *Pers. comm.* Email from Gill Smith, Waitrose, to Lauren Rowles, Keo Films Ltd, on 25/10/10. Subject: query on fish products for new Hugh Fearnley Whittingstall show - deadline 22nd.

Retailer:	Marks and Spencer (M&S).
Product:	Frozen - Two Battered Cod Portions.
Claim:	"Our sustainably sourced cod..."
Photos:	
Summary of concern:	Not clear from packaging whether the cod was sourced from a sustainable stock, thus verifying the "sustainably sourced" claim.
Evidence from retailer: ¹⁷	M&S stated that: "[The cod in this product comes from] <i>catch area: NE Atlantic, country of origin; Iceland & Norway, Sea area (caught in) FAO 27, ICES:Ia, Ib, IIa2, IIB2 Comment: (30% of catch from the Barents Sea is now MSC accredited)</i> "
Why the evidence satisfies the claim:	<ul style="list-style-type: none"> • According to ICES advice the cod stock in Iceland is well above precautionary levels. The NorthEast Arctic offshore stock level is near its record high and fishing levels are below the precautionary limit (Fpa). • The evidence supplied from the retailer and ICES advice makes it clear that this cod comes from relatively sustainable stocks in Iceland and Norway, including some MSC certified cod.
References:	<ul style="list-style-type: none"> • International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 2, pp. 9 – 15. • International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 3, pp. 1 – 10.

¹⁷ Pers. comm. Email from Liz Williams, Food and Plan A Product PR Manager, Marks & Spencer, to Lauren Rowles, Keo Films Ltd, on 25/10/10. Subject: M&S - Plaice catch methods.

Retailer:	Sainsbury's.
Product:	Frozen "Taste the difference" line caught 4 cod loins.
Claim:	"We use only line caught cod from the clear waters of Norway and Iceland. So they're responsibly fished & you get the best, chunkiest cod."
Photos:	
Summary of concern:	The capture method is one of the most sustainable methods for capturing haddock however it was not clear from packaging whether the cod was sourced from a sustainable stock and thus responsibly fished.
Evidence from retailer: ¹⁸	Sainsbury's said "This is line caught cod from the Icelandic fishery. We have worked with our supplier to ensure that bird bycatch."
Why the evidence satisfies the claim:	According to ICES advice the cod stock in Iceland is well above precautionary levels.
Reference:	<ul style="list-style-type: none"> International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 2, pp. 9 – 15.

¹⁸ Pers. comm. Email from Tom Parker, Sainsbury's, to Lauren Rowles, Keo Films Ltd, on 25/10/10. Subject: Sainsbury's Fish Products on 25/10/10.

Retailer:	Young's.
Product:	"Cook in the Bag" frozen cod fillets with sun dried tomato.
Claim:	"Responsibly sourced..."
Photos:	 
Summary of concern:	Not clear from packaging whether the cod was responsibly sourced from a sustainable stock.
Evidence from retailer: ¹⁹	Young's stated that: "These cod fillets are trawl caught from the Barents Sea (ICES area 1a 1b). Note - this fishery was very recently (November 2010) certified as sustainable by the MSC."
Why the evidence satisfies the claim:	The cod used comes from a healthy stock according to ICES and is accredited by the Marine Stewardship Council.
References:	<ul style="list-style-type: none"> • Marine Stewardship Council (MSC), 'Barents Sea Cod and Barents Sea Haddock', at http://www.msc.org/track-a-fishery/certified/north-east-atlantic/barents-sea-cod-and-haddock, date accessed: 19/11/10. • International Convention for the Exploration of the Seas (ICES), 'ICES Advice 2010', Book 3, pp. 1 – 10.

¹⁹ Pers. comm. Email from Christine Solloway, on behalf of Young's Seafood and Findus Group, to Lauren Rowles, Keo Films Ltd, on 07/12/10. Subject: A few more questions.

Retailer:	The Saucy Fish Company
Product:	"watercress and crème fraiche filling, stunning on salmon fillet. 2 fillets"
Claim:	"Our salmon is responsibly farmed..."
Photos:	
Summary of concern:	Not clear from packaging whether the salmon was farmed to any recognised third party accreditations standards that address environmental issues and thus are responsibly farmed as the claim suggests.
Evidence from retailer: ²⁰	<p>The Saucy Fish Company stated:</p> <ul style="list-style-type: none"> "The Saucy Fish Co.'s salmon fillets are responsibly sourced from GlobalG.A.P certified farms in Norway and Scotland. And as members of the GlobalG.A.P Sector Committee for Aquaculture – elected due to our expertise - The Saucy Fish Co. has considerable input into farming standards." "We also employ the services of Integra Food Secure Limited – the independent inspection body – to audit specific fish welfare requirements. Their findings have proved that The Saucy Fish Co.'s fish handling and slaughter processes actually exceed standards set out by the GlobalGAP." "We participate actively in WWF Salmon Aquaculture Dialogues to help develop global standards for responsible aquaculture that will provide the foundations for the new Aquaculture Stewardship Council (ASC), which will be fully operational next year. We're working with our suppliers to ensure that their practises enable us to achieve ASC accreditation."
Why the evidence satisfies the claim:	This salmon is GlobalGAP thus benchmarked against environmental standards, which

²⁰ Pers. comm. Email from Karen Winstanley, to Lauren Rowles, Keo Films Ltd, on 22/10/10.
Subject: Response from The Saucy Fish Co. ref. salmon sourcing

in our opinion verify the claim of responsibly farmed relative to those that are not Organic/GAA/GlobalGAP accredited.

Reference:

- Marine Conservation Society (MCS), Fishonline resource, Atlantic Salmon, at http://www.fishonline.org/search/advanced/?step=5&fish_id=86&production_method_id=2&capture_areas=fao_27&stock_detail=YToyOntzOjE3OiJzdG9ja19kZXRhYWxldGV4dCI7czo2OiJOY3J3YXkiO3M6MTc6InN0b2NrX2RldGFpbF9pY2VzIjtzOjE0OiJOY3QgYXBwbGljYWJsZSI7fQ%3D%3D, date accessed: 19/11/10.

Annex 2

The Consumer Protection Regulations

Environmental claims

The European Commission has made it clear that the Unfair Commercial Practices Directive can and should address misleading or unverifiable environmental claims made in advertising or marketing.¹⁰⁸ The Commission acknowledges that consumers weigh environmental considerations when choosing a product and therefore traders use environmental claims as powerful marketing tools.¹⁰⁹

The Commission states that 'environmental' or 'green' claims are claims that create the impression that a product or service is environmentally friendly or less damaging to the environment than competing goods or services, due to its composition, method of manufacture or production, etc.¹¹⁰

The Commission guidance to the implementation of the Unfair Commercial Practices Directive states that environmental claims must be clear, truthful, accurate, not misleading and not emphasise one environmental issue and hide negative environmental impacts.¹¹¹

Although there is some EU legislation regarding specific practice in environmental claims, such as the Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products (hereinafter the 'Organic Production Regulations')¹¹² there is no EU legislation harmonising environmental marketing.¹¹³

Trader

A trader is any person who in relation to a commercial practice is acting for purposes relating to their business, and anyone acting in the name of or on behalf of a trader.¹¹⁴ This includes companies, any individuals selling on the internet on a regular basis¹¹⁵ and organisations pursuing charitable goals.¹¹⁶

Misleading action

The CPRs provide a general prohibition on unfair commercial practices.¹¹⁷ The most relevant provision in this case, however, is a misleading action¹¹⁸, which is a practice that misleads through the information it contains, or its deceptive presentation, and causes or is likely to cause the average consumer to take a different decision.¹¹⁹ There are three types of misleading action:

- one that contains false or misleading information;¹²⁰
- one that causes confusion with competitor's products;¹²¹ or
- one that concerns the failure of a trader to comply with a firm and verifiable commitment contained in a code of conduct.¹²²

It is for the national courts and authorities to decide whether a commercial practice is a misleading action and they should refer to, *inter alia*, the current state of scientific knowledge, including behavioural economics.¹²³

The Court may require claimants to provide factual evidence to substantiate any factual claim made, and where claimants fail to provide such evidence, or the evidence that they provide is inadequate, the court may consider that the factual claim is inaccurate.¹²⁴

Misleading omission

If a commercial practice does not fall under the general prohibition, then it may still be unfair if it is a misleading omission.¹²⁵ This is a practice that fails to give consumers sufficient information in relation to a product, such as:¹²⁶

- omitting or hiding material information, or providing it in an unclear, unintelligible, ambiguous or untimely manner; and
- the average consumer takes, or is likely to take a different decision as a result.

There is a positive obligation on traders to provide all the information which the average consumer needs to make an informed choice.¹²⁷ This is both essential information according to the CPRs and other material information according to the judgement of national authorities and courts.¹²⁸

Enforcement

Under Part 8 of the Enterprise Act designated enforcement bodies who can apply to the courts to stop traders infringing a wide range of consumer protection legislation where those infringements harm the collective interests of consumers.¹²⁹ There are three types of enforcers:¹³⁰

- General enforcers – e.g. OFT, TSS and DETI;
- Designated enforcers – any public or private body designated by the Secretary of State in a statutory instrument; and
- Community enforcers – entities from other European states listed in the Official Journal of the European Union, who can apply for action in other Member States by referral of a complaint through the competent authority in that other Member State.¹³¹ The OFT is the public authority that has the ultimately responsibility for implementation of consumer protection legislation in the UK.¹³²

The designated 'enforcement authority' in the CPRs is the OFT, every local authority TSS and the Department of Enterprise, Trade and Investment in Northern Ireland (DETI).¹³³ The Consumer's Association 'Which?' is also among those listed as 'designated enforcers' but only has civil powers. Therefore there is no right of action for consumers or competitors.¹³⁴ The enforcement authority has regard to whatever 'established means' to control unfair practices that they consider appropriate.¹³⁵

Enforcers can use a range of tools to ensure that businesses are complying with CPRs. The main options, which are explained below, are:¹³⁶

- education, advice and guidance – the OFT may first seek to advise and guide a trader on compliance;
- established means – if a complaint is clearly within the scope of alternative regulation, including self-regulation, then the enforcement authority will refer it to the relevant body (e.g. the ASA is considered to be an established means for broadcast and non-broadcast media);
- codes of conduct – if a trader is breaching a code of conduct, to which he is bound, the enforcer may enlist the help of those responsible for the code of conduct in order to prevent breaches of the CPRs. The CPRs prevent: a) code owners from using their codes to promote unfair commercial practices; and b) traders failing to comply with codes of conduct to which they are bound;
- civil enforcement; or
- criminal enforcement.

Penalties

The penalties for an offence under the CPRs are as follows:¹³⁷

- Summary – a fine not exceeding the statutory minimum; or
- Indictment – an unlimited fine and/or up to two years imprisonment.

If an offence under the CPRs can be shown to be committed by a company with the consent or as a result of the neglect of an officer of the company, then that officer and the company are guilty of the offence.¹³⁸

Defences

Section 17 of the CPRs outlines the defences available if it is demonstrated that a claim is misleading and prohibited by the CPRs. In such circumstances a trader must prove that the commission of the offence was due to:¹³⁹

- A mistake;
- A reliance on information;
- The act or default of another person;
- An accident; or,
- Another cause beyond his control;

AND

All reasonable precautions were taken and all due diligence was exercised to avoid the commission of such an offence.

Annex 3

Voluntary eco-labelling schemes

The Food and Agriculture Organisation of the UN (FAO) drew up and adopted Guidelines for the Eco-labelling of Fish and Fishery Products from Marine Capture Fisheries in March 2005.¹⁴⁰ These are generally accepted as a minimum standard for operating and implementing credible, robust, fisheries eco-labelling schemes.¹⁴¹ The Guidelines specify the requirements of an eco-labelling scheme in relation to management systems, stocks and serious impacts of the fishery on the ecosystem.¹⁴² The guidelines also require that standards and monitoring should be put in place to assess the conformity of the fishery with the requirements of the eco-labelling scheme.¹⁴³

Marine Stewardship Council labels

The Marine Stewardship Council (MSC) has a blue eco-label that provides independent, third party verification that a fish product has originated from a sustainable fishery.¹⁴⁴



Figure 1 The MSC logo and associated claim, which must be displayed with the logo¹⁴⁵

The MSC has developed three overarching principles for defining a sustainable fishery:¹⁴⁶

Principle 1 - A fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited populations and, for those populations that are depleted, the fishery must be conducted in a manner that demonstrably leads to their recovery.

Principle 2 - Fishing operations should allow for the maintenance of the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the fishery depends.

Principle 3 - The fishery must be subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.

There are a further 23 detailed criteria that are applied by MSC alongside these three principles.¹⁴⁷

Earth Island Institute 'Dolphin Safe' labels

The Earth Island Institute (EII) is an international body that provides standards and monitors 51 nations and over 300 companies who fish for tuna around the world to ensure the tuna is caught by methods that do not harm dolphins.¹⁴⁸ Tuna caught in conformity with these rules may use this logo:



Figure 2 The International Dolphin Safe Logo.¹⁴⁹

Tuna labelled 'Dolphin Safe' or 'Dolphin Friendly' must have been produced according to the following standards:

- No intentional chasing, netting or encirclement of dolphins during an entire tuna fishing trip;
- No use of drift gill nets to catch tuna;
- No accidental killing or serious injury to any dolphins during net sets;
- No mixing of dolphin-safe and dolphin-deadly tuna in individual boat wells (for accidental kill of dolphins), or in processing or storage facilities; and
- Each trip in the Eastern Tropical Pacific Ocean (ETP) by vessels 400 gross tons and above must have an independent observer on board attesting to the compliance with points (1) through (4) above.¹⁵⁰

The EII also strongly encourages tuna fishermen and tuna companies to work to reduce bycatch of non-target species and where possible to release them alive.¹⁵¹

The EII standards were developed in the early 1990s and by 1997 were adhered to by more than 90% of the world's canned tuna companies.¹⁵² However, the 'dolphin friendly' certification may mislead consumers in that it highlights only one aspect of a tuna product's environmental impact, and allays the potential concerns of the consumer, but does not assess the sustainability of the tuna fishery or the effect on other species from bycatch.¹⁵³

Inter-American Tropical Tuna Commission 'Dolphin Safe' label

Since 1999 the Inter-American Tropical Tuna Commission (IATTC) has adopted and amended the Agreement on the International Dolphin Conservation Program (AIDCP).¹⁵⁴ This agreement seeks to achieve the goals of eliminating dolphin mortality in the purse-seine tuna fishery in the eastern Pacific Ocean.¹⁵⁵ It also seeks to avoid, reduce and minimise the incidental catch and discard of juvenile tuna and non target species.¹⁵⁶ There are currently 13 states (including the EU and the USA) that have ratified the agreement and others that are provisionally applying that agreement.¹⁵⁷

However, a major problem in relation to the AIDCP is that it allows the use of purse seine nets, and allows a certain number of dolphins to be killed by setting a dolphin mortality limit of no more than five thousand dolphins per year.¹⁵⁸ The AIDCP then allows the labelling of tuna as “dolphin safe” of tuna as long as it was harvested in a manner consistent with the Agreement.¹⁵⁹

Friend of the Sea eco-labelling scheme

Friend of the Sea (FOS) is a non-governmental organisation that has developed sustainable seafood certification standards, which have been applied by more than 100 companies to date.¹⁶⁰ The FOS assesses fisheries by their standards and then they may submit the candidate fishery to an internationally accredited certification body for independent assessment.¹⁶¹ However there may be a lack of clarity surrounding the definition of certain FOS approved stocks and fisheries, such that they may be subsets of larger publically defined stocks and fisheries.¹⁶²

FOS certification criteria include that:

- the target stock must not be overexploited;
- the fishing method must not generate more than 8% discards and must not bycatch endangered species;
- the fishing gear cannot impact the seabed; and
- the fishery must be compliant with all regulations, including Total Allowable Catches, minimum size, mesh size, etc.¹⁶³

FOS has continuous onsite monitoring networks to provide verification of the origin of their certified products.¹⁶⁴

Naturlands Standards for Sustainable Capture Fisheries

Naturlands was established in 1982 and provides an eco-label for organic aquaculture products and more recently the ‘Naturlands Wildfish’ eco-label for sustainable inland and marine capture fisheries.¹⁶⁵ The latter includes an assessment of social and economic sustainability, in addition to the ecological sustainability, of the fishery.¹⁶⁶ Some of the more important requirements of the standards are:¹⁶⁷

- The maintenance of the long-term integrity of the species and the ecosystem;
- The assessment of all sources of impact and capture;
- The prohibition on capture of marine mammals, turtles, sharks;
- The prohibition on use of explosives and damage to coral reefs;
- The prohibition of trawl methods on sensitive sea-bed habitats or without excluder devices to minimise bycatch; and
- The control of fisheries (minimum size, quotas, gear, techniques, seasons, sanctuaries, avoidance of bycatch) by fishery management systems.

Marine Aquarium Council

The Marine Aquarium Council (MAC) was established in 1998 and adopted third party accredited standards and certification for the wild capture and treatment of fish for the aquarium industry.¹⁶⁸ These standards cover three areas:¹⁶⁹

- Ecosystem and Fishery Management – including collection area ecosystem management, fishery management and conservation.
- Collection, Fishing and Holding – including the harvesting and related activities of fish, coral, live rock and other coral reef organisms.
- Handling, Husbandry and Transport – including holding, husbandry, packing, transport, etc. at all stages of the marine aquarium industry.

Endnotes

¹ *pers. comm.* Seafood Authority Economics Group, 20/10/10; The Guardian, 'Britons want to buy sustainable fish but labels leave us baffled', 24 May 2010.

² European Commission, 'Communication on Fishing Opportunities for 2009' (May 2008), p. 4.

³ In this document the phrase 'fish products' includes products containing all marine and freshwater fish and shellfish species.

⁴ Office of Fair Trading, 'Market studies: Guidance on the OFT approach' (2010).

⁵ See, for example, the recent speech by Maria Damanaki, European Commissioner for Maritime Affairs and Fisheries, 'The Marine Food Chain: better management for new challenges' (Brussels, 8 December 2010).

⁶ Ecolabelling of Fisheries Products: Assessment of its benefits, <http://www.thefishsite.com/articles/721/ecolabelling-of-fisheries-products-assessment-of-its-benefits>, date accessed: 20/10/10.

⁷ Which? 'Plenty more fish in the sea' (June 2010), p.27.

⁸ The Marine Stewardship Council (MSC) has a blue eco-label that provides independent, third party verification that a fish product has originated from a sustainable fishery.

⁹ The findings and analysis contained in this briefing were originally developed on behalf of KEO Films, for the purposes of the production of their documentary film.

¹⁰ For further background on the CPRs see Annex 2.

¹¹ Office of Fair Trading, 'Consumer Protection from Unfair Trading, Guidance on the UK Regulations' (May 2008), p. 10.

¹² EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices' SEC(2009) 1666 (December 2009), p. 37; Office of Fair Trading, 'Consumer Protection from Unfair Trading, Guidance on the UK Regulations', p. 15.

¹³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

¹⁴ Case 14/83, *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen* [1984] ECR 1891.

¹⁵ Directive 2005/29/EC, Recital 18.

¹⁶ Office of Fair Trading, 'Consumer Protection from Unfair Trading, Guidance on the UK Regulations', p. 25; Case C-210/96 *Gut Springenheide and Tusky* [1998] ECR I-4657, para 31.

¹⁷ EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices', p. 26. Recital 1 of the Unfair Commercial Practices Directive makes explicit reference to the Community objective of a high level of consumer protection.

¹⁸ EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices', pp. 25-26.

¹⁹ Joined Cases T-183/02 and T184/02 *El Corte Inglés v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* ("Mundicolor") [2004] ECR II-00965, para 68; Case T-20/02 *Interquell GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* ("Happydog") [2004] ECR II-1001, para 37.

²⁰ Office of Fair Trading, 'Consumer Protection from Unfair Trading, Guidance on the UK Regulations', p. 68.

²¹ *Ibid.*, p. 68.

²² *Ibid.*, p. 69.

²³ The Consumer Protection from Unfair Trading Regulations 2008, reg 2(1).

²⁴ EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices', p. 22.

²⁵ *Ibid.*, pp. 22-23.

²⁶ *Ibid.*, p. 24.

²⁷ Consumer Protection from Unfair Trading Regulations 2008 reg 2(4).

²⁸ Consumer Protection from Unfair Trading Regulations 2008 reg 2(1).

²⁹ The Global Aquaculture Alliance (GAA) is a non-governmental organisation which encourages the use of responsible aquaculture practices through its voluntary Best Aquaculture Practices (BAP) certification scheme. GAA also works to improve production and marketing efficiencies, and promote effective, coordinated regulatory and trade policies.

³⁰ GlobalGAP is a private sector body that sets voluntary standards for the certification of production processes of agricultural (including aquaculture) products around the globe. The GlobalGAP standard is primarily designed to reassure consumers about how food is produced on the farm by minimising detrimental environmental impacts of farming operations, reducing the use of chemical inputs and ensuring a responsible approach to worker health and safety as well as animal welfare.

³¹ Enterprise Act 2002, s. 214(1).

³² Enterprise Act 2002, s. 214(2)(a)-(d).

³³ As a specified 'general' enforcer under Enterprise Act 2002 s 213. Enterprise Act 2002 s 213 specifies the OFT and every local weights and measures authority in Great Britain as 'general enforcers', and provides the Secretary of State with the power to designate other organizations as 'designated enforcers' by statutory order. A number of bodies have been made designated enforcers by statutory instrument, including the Consumers' Association (commonly known as Which?), under The Enterprise Act 2002 (Part 8) (Designation of the Consumers' Association) Order 2005 (SI 2005/917). Most other designated enforcers have sector-specific interests, such as the Civil Aviation Authority, Ofcom and the Financial Services Authority. Designated enforcers may also make an application to court for an enforcement order under the Enterprise Act 2002, but must consult with the OFT prior to doing so, as specified by Enterprise Act 2002 s 214(1).

³⁴ Enterprise Act 2002 s 215.

³⁵ Enterprise Act 2002 s 217.

³⁶ Enterprise Act 2002 s 217(6). Breaches of the CPRs are actionable as 'community infringements' for the purposes of the Enterprise Act 2002, under Enterprise Act 2002 s 215. In this context, a 'community infringement' is an act or omission which harms the collective interests of consumers and which contravenes a 'listed Directive' as given effect by the laws, regulations or administrative provisions of an EEA State (Enterprise Act 2002 s 212(1)). The CPRs gave effect in the UK to the Unfair Commercial Practices Directive. The Unfair Commercial Practices Directive is a 'listed Directive' in Schedule 13 to the Enterprise Act 2002, as amended by reg 26 CPRs. Therefore acts in breach of the CPRs are 'community infringements' for the purposes of the Part 8 Enterprise Act 2002.

³⁷ OFT website, <http://www.of.gov.uk/about-the-oft/what/>, date accessed: 19/10/10.

³⁸ UK Government, 'Public Bodies Reform – Proposals for Change', 14 October 2010, <http://www.number10.gov.uk/wp-content/uploads/2010-10-14-Public-bodies-list-FINAL.pdf>, date accessed: 19/10/10.

³⁹ BIS Press Release, 'Reform of competition and consumer bodies' (14 October 2010).

⁴⁰ This said, the Secretary of State for Business, Innovation and Skills (BIS) has suggested that national consumer challenges will be handled by one or more dedicated expert teams within the Trading Standards structure, with the work co-ordinated nationally (Statement by Vince Cable, Secretary of State, Department for business, innovation and skills, 14 October 2010). This will require legislative amendment.

⁴¹ Office of Fair Trading, 'Policy on Criminal Enforcement of the Consumer Protection from Unfair Trading Regulations', September 2010, p.6.

⁴² *Ibid.*, p.6.

⁴³ Office of Fair Trading, 'Prioritisation Principles', October 2008, p. 16.

⁴⁴ *Ibid.*, pp. 8-10.

⁴⁵ i.e. whether there are any direct/indirect effects on consumer welfare (financial and non-financial detriment, including emotional distress). An example of an indirect effect could be the deterrent effect of taking action in a market where similar issues exist in other markets (i.e., misleading green claims on other food products) or action that leads to consumers being more informed or empowered (Office of Fair Trading, 'Prioritisation Principles', p. 13).

⁴⁶ i.e. whether the work fits with OFT strategy and/or other objectives and whether the OFT is best placed to act and what the impact the new work will have on their current portfolio.

⁴⁷ i.e. whether the resource requirements of the work are proportionate to the benefits from doing the work; the period over which the resources will be needed; and any efficiency savings that would allow the OFT to meet their requirements more efficiently.

⁴⁸ Office of Fair Trading, 'Market Studies: Guidance on the OFT approach', June 2010, p.2.

⁴⁹ *Ibid.*, p.2.

⁵⁰ *Ibid.*, p.6.

⁵¹ *Ibid.*, p.6.

⁵² *Ibid.*, p.3.

⁵³ Office of Fair Trading website, 'Market studies - further information' at <<http://www.oft.gov.uk/OFTwork/markets-work/market-studies-further-info/>> date accessed: 21/10/10.

⁵⁴ Office of Fair Trading website, 'Complaint procedures against the OFT' at <<http://www.oft.gov.uk/about-the-oft/oft-structure/accountability/complaint#named2>> date accessed: 12/10/10.

⁵⁵ *Cityhook v OFT and Ors* [2009] EWHC 57.

⁵⁶ UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 2161 UNTS 447; 38 ILM 517 (1999).

⁵⁷ See the Findings in Communication ACCC/C/2008/33, a case concerning access to justice under the Aarhus Convention brought by ClientEarth and the Marine Conservation Society. All case documents available at <<http://www.unece.org/env/pp/compliance/Compliance%20Committee/33TableUK.htm>>.

⁵⁸ The *Wednesbury* principles of administrative review (derived from *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223). The Committee noted that the *Wednesbury* principles have also been criticised in the Supreme Court (in *R. (on the application of Daly) v Secretary of State for the Home Department* [2001] 2 A.C. 532 (HL)) and the European Court of Human Rights (*Smith v United Kingdom* [2001] 31 E.H.R.R. 24).

⁵⁹ See general criticisms of the UK standard of review in paragraphs 123-127 of the Committee's Findings. The findings make it clear that Article 9(3) grants citizens the right to a review of procedural *and* substantive legality of acts and omissions of public authorities.

⁶⁰ Enterprise Act 2002 s 213(1)(b).

⁶¹ Enterprise Act 2002 s 214(1)(b).

⁶² Hackney Council Website, <http://www.hackney.gov.uk/et-enforcement-policy-2.htm>, accessed 11 October 2010.

⁶³ Local Government Ombudsman website, <http://www.lgo.org.uk/publications/fact-sheets/complaints-about-trading-standards/>, accessed 18 October 2010.

⁶⁴ ASA website, <http://www.asa.org.uk/About-ASA.aspx>, accessed 18 October 2010.

⁶⁵ ASA Website <http://www.asa.org.uk/About-ASA.aspx>, accessed 18 October 2010.

⁶⁶ CAP Code (12th Ed.), September 2010, p. 103.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, p.6.

⁶⁹ *Ibid.*, p.7; ASA website, <http://www.asa.org.uk/Regulation-Explained/What-we-cover/Complaints-outside-remit.aspx>, accessed 11 October 2010.

⁷⁰ ASA website, <http://www.asa.org.uk/Media-Centre/2010/ASA-digital-remit-extension.aspx>, accessed 11 October 2010.

⁷¹ CAP Code, p.96.

⁷² *Ibid.*, p.100.

⁷³ *Ibid.*, p.102-103.

⁷⁴ ASA Adjudication on Shell International Ltd (13 August 2008) at <http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2008/8/Shell-International-Ltd/TF_ADJ_44828.aspx>

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- ⁷⁵ ASA Adjudication on ExxonMobil UK Ltd (3 September 2008) at <http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2008/9/ExxonMobil-UK-Ltd/TF_ADJ_44927.aspx>
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- ⁷⁸ ASA Adjudication on British Gas Trading Ltd (30 January 2008) at <http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2008/1/British-Gas-Trading-Ltd/TF_ADJ_43902.aspx>
- ⁷⁹ ASA Adjudication on Ryanair Ltd (18 July 2007) at <http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2007/7/Ryanair-Ltd/TF_ADJ_42885.aspx>
- ⁸⁰ The Guardian supplement, 'A practical guide to ethical living: Avoid greenwash, when a business declares itself ethical, what does it really mean?' 28 November 2009, p2.
- ⁸¹ Zara Maung, 'Green product claims need to be properly regulated' *The Guardian* (18 May 2010) at <<http://www.guardian.co.uk/sustainable-business/green-product-labelling-claims-blog-maung>>.
- ⁸² 'Retail sale to the final consumer' includes products sold direct to the consumer from a retail outlet such as supermarkets, grocers, fishmongers, markets and the internet. Fish and fish products sold by catering establishments, such as restaurants, canteens, takeaways, etc., do not fall under the labelling requirements. Regardless of whether they fall under the Regulations, traceability must be passed all the way through the food production chain – from producer all the way to consumer (Food Standards Agency, 'Fish Labelling Regulations 2003: Guidance Notes for England, Scotland, Wales and Northern Ireland' (March 2003), pp. 4; 7).
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- ⁸⁴ Trading Standards Institute website, Food labelling for fishmongers page, <http://www.tradingstandards.gov.uk/advice/advice-business-fdlabelsum10.cfm>, accessed 6 October 2010.
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- ⁸⁸ Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products, OJ No. L17, 21.1.2000, p.16.
- ⁸⁹ Commission Regulation (EC) No 2065/2001 of 22 October 2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products, OJ No. L278, 23.10.2001, p.6.
- ⁹⁰ Food Standards Agency, 'Fish Labelling Regulations 2003: Guidance Notes for England, Scotland, Wales and Northern Ireland', pp. 4; 3.
- ⁹¹ If included in chapter 3 of the Customs Code Combined Nomenclature (CN Codes).
- ⁹² Council Regulation 104/2000, Article 4; Food Standards Agency, 'Fish Labelling Regulations 2003: Guidance Notes for England, Scotland, Wales and Northern Ireland', p. 4.
- ⁹³ S.I. No. 420 of 2010, pp. 5-31.
- ⁹⁴ Food Standards Agency, 'Fish Labelling Regulations 2003: Guidance Notes for England, Scotland, Wales and Northern Ireland', pp. 4; 11.

⁹⁵ Aquaculture is defined in Council Regulation 2792/1999 and that definition is referred to in Article 4(3) of Regulation 2065/2001; FSA Guidance, 2003, p. 6.

⁹⁶ Food Standards Agency, 'Fish Labelling Regulations 2003: Guidance Notes for England, Scotland, Wales and Northern Ireland', p. 14.

⁹⁷ *Ibid.*, pp. 4; 14.

⁹⁸ *Ibid.*, p. 14.

⁹⁹ Marine Stewardship Council website, 'Labelling for origin and species' at <http://www.fishonline.org/buying_eating/labelling.php>, accessed 8 October 2010.

¹⁰⁰ See Annex 1.

¹⁰¹ The International Council for the Exploration of the Seas (ICES) scientists provide information on fish stocks in the North Atlantic.

¹⁰² Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, Article 23.

¹⁰⁵ Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products, OJ L 189, 20.7.2007, Article 3.

¹⁰⁶ *Ibid.*

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¹⁰⁸ EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices', p. 41.

¹⁰⁹ *Ibid.*, p. 38.

¹¹⁰ *Ibid.*, p. 37 – 38.

¹¹¹ *Ibid.*, p. 38.

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¹¹⁵ Office of Fair Trading, 'Consumer Protection from Unfair Trading, Guidance on the UK Regulations', p. 66-67.

¹¹⁶ EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices', p. 15 – 16.

¹¹⁷ The Consumer Protection from Unfair Trading Regulations 2008, reg 3(1).

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¹²¹ The Consumer Protection from Unfair Trading Regulations 2008, reg 5(3)(a); EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices', p. 34.

¹²² The Consumer Protection from Unfair Trading Regulations 2008, reg 5(3)(b); EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices', p. 34.

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- ¹²⁷ EU Commission Staff Working Document, 'Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices', p. 48.
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- ¹²⁹ Department for Business, Innovation and Skills (BIS) website, <http://www.bis.gov.uk/policies/consumer-issues/enforcement-of-consumer-law/enterprise-act-part-8-enforcement-orders>, accessed 6 October 2010.
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- ¹³⁸ The Consumer Protection from Unfair Trading Regulations 2008, reg 15.
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- ¹⁴⁰ *Guidelines for the Eco-labelling of Fish and Fishery Products from Marine Capture Fisheries*, Fisheries and Aquaculture Department of UN Food and Agriculture Organisation (FAO), 2005, p. 1.
- ¹⁴¹ *Assessment Study of On-Pack, Wild-Capture Seafood Sustainability Certification Programmes and Seafood Ecolabels*, (2009), Accenture and WWF International, p. 7.
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¹⁶⁷ *Ibid.*, p. 17-18.

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