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January 18, 2011

Sam Schuchat
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Submitted via Email to vtermini@scc.ca.gov

RE: Comments on California Sustainable Seafood Initiative Draft Protocol

Dear Mr. Schuchat and Dr. Mace:

Oceana is pleased submit comments on the November 29, 2010 draft of the Ocean Protection Council's California Sustainable Seafood Initiative (CSSI) Protocol. We have been supportive of AB 1217 and its vision to provide market incentives to California fisheries that improve their sustainability. We commend the thought, work, and stakeholder participation that went into OPC's November 29, 2010 draft, including the Advisory Panel Process. We attended and provided public comment at the advisory panel meeting on October 13, 2010. In particular, we support the traceability components of the CSSI protocols which will provide accurate information to consumers on the species, origin, fishing gear, and other pertinent information about any seafood item containing the California eco-label. If implemented effectively, the CSSI will help California fishing communities, better protect California's marine ecosystems, and establish California as a leader in the global sustainable seafood movement.

First and foremost, the success of an eco-labeling program depends on the legitimacy of its claims. The California Sustainable logo must not be merely a self-proclamation of sustainability, an origin marketing label, or a declaration that a fishery is under management. Since it will be funded by the State of California, it is essential that the label comes from an independent 3rd party and avoids potential conflicts of interest. The objective of the CSSI should be to promote innovation and reward changes that substantially reduce the ecosystem impacts of California fisheries.

We have serious concerns about the Marine Stewardship Council as a definition of sustainable seafood. Having participated extensively in the MSC process over the last decade, including as objectors in the MSC certification of Pacific hake (*Merluccius productus*) in 2009, we share the widespread criticism regarding several fundamental flaws in the MSC system, some of which the draft CSSI protocols correctly point out. Even since the draft CSSI protocols were released,

there has been additional criticism of the MSC by top scientists worldwide[1]. . If the OPC is chooses to adopt the MSC as a starting point for the CSSI protocols, we would only support that if the following significant modifications are made to the standards and process.

Recommendation 1: The OPC should select, evaluate, and accredit certification bodies using strong conservation criteria for any certification funded by the OPC.

Perhaps the greatest flaw in the MSC system is the inherent conflict of interest of certification bodies, which is caused by the direct financial relationship with the fishery clients. This conflict manifests itself, as the draft CSSI protocols point out, through inflated scores particularly in cases where data is sparse or inconclusive, as certifiers have an incentive to provide their clients with a positive certification at the least cost, with as few conditions as possible. There are even examples of fisheries switching certifying bodies that are willing to close conditions placed by earlier certification bodies without the fishery meeting the conditions[2]. Since fishery clients choose their certifiers, they are able to shop around for certification body that will be the least stringent, which ultimately undermines the incentives for improvement offered by certification. Unfortunately, the MSC has thus far been unwilling to put the appropriate safeguards in place to minimize this conflict of interest, such as randomly assigning certification bodies, overseeing the scoring decisions of certifiers, or evaluating certifier scoring decisions during accreditation.

The solution to this problem is to remove the financial connection between the fishery and the certification body, by selecting and rewarding certification bodies based on their rigor, stringency, and conservation ethic, rather than their ability to provide certification. Any certification funded by the OPC must be done by certification bodies selected by the OPC, not the representatives of the fishery. In other words, the MSC client must be the OPC.

An important mechanism to accomplish this is for the OPC to develop an accreditation process for certifiers that wish to certify to the California standard. Currently, the MSC uses an independent accreditation process to ensure its certifiers have the technical qualifications. The OPC should develop and implement California-specific accreditation criteria to ensure that only the toughest and most robust certification bodies are used. The OPC should also evaluate and provide oversight over certification bodies on the appropriateness of the scoring decisions and the conditions placed on any fishery certified to the California standard. In providing such oversight, the OPC should seek independent peer-review by the Ocean Science Trust and other experts that can ensure the robustness and conservation ethic of the CSSI is upheld.

Recommendation 2: Make MSC pre-assessment results public and use them to prioritize the most sustainable fisheries for certification

We support the intent of the draft CSSI protocols to conduct a Pre-Assessment of all California Fisheries for which there is a significant market. We believe strongly that the results of this pre-assessment should be made public, as it will be the result of state funding. These pre-assessment results will have many uses, in particular the identification of key data needs and conservation

[1] Blight et al. 2010. Fishing for Data in the Ross Sea. *Science* 330:1316. 3 December 2010. (Letter by 33 scientists objecting to the MSC certification of Ross Sea toothfish.)

[2] e.g., the Alaska pollock fishery, which changed certifiers after initial certification to one that closed and removed 2 key conditions on the basis that they were not economically viable.

challenges specific to each fishery. This information will be useful to fishery managers, fishery participants, marine conservation organizations, and California citizens.

Another key criticism of the MSC is that the cost of certification creates a barrier to entry for small-scale fisheries that are less able to afford certification costs. While there are some exceptions, the MSC has tended to initially certify large-scale fisheries (e.g., Alaska Pollock, New Zealand hoki, Pacific hake) prior to many other fisheries that are arguably much more sustainable. The inadvertent effect of this unequal access to certification is that the rewards of certification (e.g., access to markets) are not provided to the fisheries that need it or deserve it the most, hence distorting the overall sustainability incentives.

Since funding comes from the state, the CSSI has the opportunity to correct this distortion, by prioritizing the sequence of state certifications on the basis of the MSC Pre-Assessments. Therefore, the OPC can select the scale and scope of the fishery "units of certification" based on those that score highest. For example, if there is a subset of a larger fishery (geographically or by gear type) that is using more sustainable fishing gear or has enacted progressive practices that reduce ecosystem impacts relative to the larger fishery, the OPC should prioritize funding for certifying such fisheries before the larger fishery. Since the "unit of certification" is determined by the client paying for certification, it is completely within the OPC's purview to prioritize in this way.

Recommendation 3: A substantial portion of the CSSI budget should be allocated to fishery improvement projects to address strategies identified in the MSC pre-assessment results.

The greatest common barrier to improving fisheries is often the associated financial costs, whether they come from improved stock assessments, more precautionary management, reducing bycatch, or switching to less impactful fishing gears. If the goal of the CSSI is to improve the sustainability of California fisheries, a substantial portion of the overall funding should go toward projects that either move the fishery toward certification or meet conditions so that certified fisheries can maintain certification.

As part of the CSSI, AB 1217 established a competitive grant program "for the purpose of assisting California fisheries in qualifying for certification to internationally accepted standards for sustainable seafood"[3]. However, the draft CSSI protocol's section on "Funding" (p. 5) does not appear to include funding for fishery improvement projects for fisheries that do not yet meet the certification. The MSC pre-assessments will highlight specific strategies to improve the sustainability scores in each fishery. We strongly believe the intent of AB 1217 was to include funding for fishery improvement projects that will implement changes in fishing practices, data collection, and management as recommended by the pre-assessment for the purpose of moving fisheries toward certification. The requirements for receiving such funding should be that the project responds to issues identified in the pre-assessment and that the design and results of the projects undergo thorough independent peer review by the California Ocean Science Trust and other experts. Such independent review is necessary to ensuring that fishery improvement projects result in legitimate, substantial improvements toward sustainability, rather than simply green-washing. While participants in such improvements would not receive the California eco-

[3] California Public Resources Code Section 35617(b)(3)

label, these projects could be the basis for linking participating California fisheries with large seafood buyers seeking to support such fisheries.

We urge the OPC to include funding for implementing fishery improvement projects consistent with pre-assessment results within the context of the CSSI competitive grant program, including fisheries that are not yet ready for certification. While some California fisheries may already qualify for the CSSI certification, adding this component will greatly expand the participation of California fisheries in the program. In fact, supporting projects that address major ecosystem impacts could offer major benefits toward the goal of healthy California oceans.

Recommendation 4: Add additional considerations for forage species and bottom trawl fisheries into the California Standards

We agree with the concerns about the MSC certification criteria raised by the OPC staff and others and support the staff recommendation to include higher thresholds for some performance indicators than currently set by the MSC. In several cases, the MSC standards do not embody a sufficient conservation ethic acceptable for California. For example, the California legislature, the California Fish and Game Commission, and the Pacific Fishery Management Council have all banned the commercial harvest of krill, while the MSC has certified a krill fishery as sustainable. We agree with the concerns that OPC staff and others have raised regarding the treatment of stock status and bycatch of endangered, threatened, or protected species. In addition, we have serious concerns with the MSC scoring system's treatment of bottom trawl fisheries and forage species fisheries, and we ask the OPC to include additional California standards to address these concerns.

Forage species

Forage species such as sardines, anchovies, herring, krill, and market squid form the foundation of the marine food web. There is considerable concern about management of fisheries for these species, and it is clear that single-species management does not ensure healthy populations of forage species or the predators that depend on them.[4] Ecosystem-based management is therefore a necessity. In 2010, the MSC's working group on low trophic level fisheries concluded that fishing forage species at tradition fisheries management benchmarks (e.g., Maximum Sustainable Yield) can have very significant ecosystem consequences and the MSC is currently in the process of revising their guidance on these species[5].

Thus, the CSSI should not consider fisheries for forage species for certification unless and until an enforceable management policy for such fisheries is established to ensure that an adequate abundance of forage species is maintained in order to provide for the long-term viability, resilience, biodiversity and general health of our ocean ecosystems.

[4] Walters, C. J., Christensen, V., Martell, S. J., and Kitchell, J. F. 2005. Possible ecosystem impacts of applying MSY policies from single-species assessment. ICES Journal of Marine Science, 62: 558-568.
[5] MSC Press Release, 28 July 2010. MSC to strengthen fisheries assessment guidance on low trophic level fisheries. http://www.msc.org/newsroom/news/msc-to-strengthen-fisheries-assessment-guidance-on-low-trophic-level-fisheries

Specifically, we recommend that the CSSI only consider funding certification for a fishery targeting forage species if it meets the following minimum objectives:

1. Management is directed by an enforceable policy that recognizes and protects the important role of forage species in marine ecosystems;
2. Management of the fishery includes specific allocations given first to the ecosystem, including fish, invertebrates, seabirds, marine mammals, sea turtles and other marine life, when calculating appropriate catch levels;
3. If appropriate, management prohibits new fisheries for forage species unless and until research shows that the fishery can be prosecuted without hurting the ecosystem; and
4. Additional research is conducted and encouraged relevant to these objectives.

Furthermore, given the forage species are much more valuable left in the ocean than as feed for farmed fish, the CSSI must not be used to validate the false claim that feeding forage species to farmed fish is "sustainable". Since the California eco-label is targeted at seafood consumers, the OPC should prioritize funding for fishery species that are directly consumed by humans, rather than species which are primarily used as aquacultural feeds, reduction into fish meal, agricultural feeds/fertilizers, or bait.

Given the potential for major ecosystem impacts and the lack of existing guidance on sustainable forage species management within the existing MSC criteria, forage species are not appropriate candidates for certification unless and until they meet these minimum objectives. Therefore, we ask that the California standards require a score of SG 100 for Performance indicators 2.5.1, 2.5.2, and 2.5.3 for any major forage species. Instead, developing ecosystem-based fishery management plans for California forage species could provide a path to meeting these objectives, and we urge the OPC to use CSSI funds and other funds for such improvements.

Bottom trawl fisheries

Bottom trawling has many significant adverse impacts to the marine environment. A 2002 synthesis report by the National Research Council[6] documented many of these impacts, including:

- changes in physical habitat of ecosystems;
- changes in biologic structure of ecosystems;
- reductions in benthic habitat complexity;
- changes in availability of organic matter for microbial food webs;
- changes in species composition; and
- reductions in biodiversity.

Bottom trawls are among the least selective fishing gear, and bycatch continues to be a serious issue in these fisheries[7]. Furthermore, it is often the case that species caught with trawl gear can also be economically caught with alternative fishing gears with far less habitat impacts, bycatch,

[6] NRC (2002). Effects of Trawling and Dredging on Seafloor Habitat. Washington, D.C, National Academy of Sciences, National Research Council.

[7] See for example: Chuenpagdee et al. 2003. Shifting gears: assessing the collateral impacts of fishing methods in US waters. *Frontiers in Ecology and the Environment* 10(1):517-524.

and other ecosystem damage. In fact, due to these widespread documented concerns, existing California state policy enacted by the legislature bans trawling in most of state waters, assumes adverse impacts unless proven otherwise, and promotes conversion of bottom trawl fisheries to more sustainable fishing gears[8].

Unless there is bottom trawling has been zoned only to specific areas where strong scientific support refutes the conclusion that the gear does not cause habitat damage or other adverse impacts, the CSSI should not fund certification of such fisheries. Therefore, we ask that the California standards include a required score of 100 for Performance Indicator 2.4.1 for any trawl fishery. However, in line with our previous comments regarding fishery improvement, we support OPC funding for research on the effects of trawling in specific areas, projects to convert bottom trawl effort to more sustainable gears, and management changes to limit the footprint of trawling to areas where trawl impacts are minimal.

Concluding Remarks

Ultimately, the success of the CSSI will be measured based on its ability to promote the marketability of California-caught seafood and the demonstrated changes it creates in fisheries that lead to healthier ecosystems. Both of these objectives depend on the credibility and legitimacy of the program from a conservation perspective. Certainly the draft protocols are off to a great start, and we hope our recommendations will help strengthen the final protocols. We would be happy to further discuss these recommendations or provide more detailed information. Thank you for considering our comments.

Sincerely,

Geoffrey G. Shester, Ph.D.
California Program Director

CC: John Laird, Secretary for Natural Resources

[8] See California Fish and Game Code Sections 8841 and 8495, as enacted through California Senate Bill 1459 in 2004.