

# Seafood Certification based on FAO Guidelines and Code of Conduct: A Credible Approach?

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**Summary:**

The United Nations' Food and Agriculture Organization ("FAO") has produced several sets of Guidelines for creating and implementing seafood certification and ecolabelling schemes, as well as a Code of Conduct for fisheries management. The objectives stated in their text indicate clearly that the Guidelines and Code of Conduct were never intended for use as independent certification standards. Further, they cannot be used as standards without contravening the Guidelines: none meets the definition of a "standard for certification," in part because they lack the measurable performance indicators required for consistent and meaningful performance certification. Accordingly, the FAO documents are not and were not designed to be independent certification standards. Instead, the Guidelines provide minimum procedural and substantive elements that credible certification schemes must follow when setting and implementing certification standards.

Many certification schemes already use the Guidelines as intended, to guide development of their standard-setting and implementation processes and to substantively inform the contents of their standards. This review examines other schemes that have asserted substantive conformity with FAO documents without following all the elements set out in the Guidelines. The Global Trust certification systems for capture fisheries and aquaculture, for instance, do not fully conform to the FAO Guidelines because:

- Global Trust is engaging in certification through conformance criteria "based on" the FAO Guidelines and Code of Conduct, but those criteria do not provide the measurable indicators required by FAO Guidelines to ensure consistent and meaningful performance certification.
- Global Trust is certifying conformance either to its own standards, which would be a conflict of interest that contravenes the Guidelines, or to standards developed and owned by the entities seeking certification, which would lack independence. However characterized, the standard was not created in conformity with the Guidelines.

Over the past decade, numerous seafood certification and ecolabelling schemes have been developed to provide incentives for sustainable fisheries management and responsible aquaculture production. These systems vary in their structure, governance, and substantive requirements, but to date, all well-recognized and credible certification systems for capture fisheries and aquaculture have been based on independent, third-party certification standards specifically created to evaluate performance.

Responding to the proliferation of seafood certification schemes, the Food and Agriculture Organization of the United Nations ("FAO") convened stakeholders to create guidelines for ecolabelling and certification schemes for capture fisheries and aquaculture.<sup>1</sup> Developed between 2009 and 2011 and endorsed by the FAO's member countries, each of the three sets of FAO Guidelines sets forth the categories of substantive issues that FAO has determined credible

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<sup>1</sup> FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries, Revision 1 (2009); FAO Guidelines for the Ecolabelling of Fish and Fishery Products from Inland Capture Fisheries (2011); FAO Technical Guidelines on Aquaculture Certification (2011).

certification systems should address, and the processes and governance systems they must adopt when developing and applying certification standards. These Guidelines documents elaborate on FAO's prior (1995) Code of Conduct for Responsible Fisheries,<sup>2</sup> which specifically called for such development of "technical guidelines in support of implementation of the Code,"<sup>3</sup> and on an associated checklist by John Caddy.<sup>4</sup>

Recently, the FAO Guidelines, Code of Conduct, and Caddy checklist have been cited as the basis for private third-party seafood certification. For example, Global Trust has used these documents to create an "FAO/ISO based Responsible Fisheries Management Certification,"<sup>5</sup> under which it has certified Alaskan salmon and other fisheries on behalf of the Alaska Seafood Marketing Institute ("ASMI") and Icelandic cod for the Fisheries Association of Iceland.<sup>6</sup> As explained by ASMI, "the assessment is performed *directly* against the most well known internationally-agreed set of principles for responsible fisheries management, the FAO Code and Guidelines."<sup>7</sup> Global Trust is also working with the Canadian Aquaculture Industry Alliance ("CAIA") to develop a certification scheme, based on the Code of Conduct and FAO Aquaculture Guidelines, for Canadian aquaculture.<sup>8</sup>

This review considers whether the FAO Guidelines, Code of Conduct and Caddy checklist can properly be used "directly" as certification standards in a credible seafood certification system. It concludes that they cannot: FAO's intent and behavior, as well as the structure and text of the FAO Guidelines, Code of Conduct and checklist, make clear that they are not certification standards. Instead, they establish minimum prerequisites for a separate standard-setting process, which in turn must be part of a credible and independent certification scheme. Therefore, without further process that conforms to the relevant FAO Guidelines, they should not be used to certify any fishery or aquaculture facility or group of facilities. This review also discusses the Global Trust scheme to illustrate the pitfalls inherent in certification that attempts to be based on the FAO documents without development of corresponding, credible governance protections.

### **FAO does not support and did not intend for its documents to be directly used for certification.**

At the most basic level, the Guidelines, Code of Conduct, or Caddy checklist were never intended to be certification standards. The primary purpose of FAO's Code of Conduct and the Caddy checklist is to assist in the identification of gaps and weaknesses in governmental fisheries management. Specifically the Code, which is primarily addressed to nation-states, establishes "principles . . . for

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<sup>2</sup> FAO Code of Conduct for Responsible Fisheries (1995).

<sup>3</sup> Twenty-Eighth Session of the FAO Conference, Resolution Adopting Code of Conduct for Responsible Fisheries (Oct. 31, 1995), ¶ 5.

<sup>4</sup> John Caddy, A Checklist for Fisheries Resource Management Issues Seen from the Perspective of the FAO Code of Conduct for Responsible Fisheries, FAO Fisheries Circular No. 917 (October 1996).

<sup>5</sup> <http://www.gtcert.com/fao-based>

<sup>6</sup> The Fisheries Association of Iceland has passed authority for this certification to the Iceland Responsible Fisheries Foundation.

<sup>7</sup> ASMI, The FAO-Based Model, at <http://sustainability.alaskaseafood.org/fao-based> (emphasis added).

<sup>8</sup> The Australian company SAI Global recently bought Global Trust, and has indicated that it wants to continue this model. "Global Trust acquired by Australian public firm SAI Global," Seafood.com News (May 2, 2012).

responsible fishing and fisheries activities” and “principles and criteria for the elaboration and implementation of national policies for responsible conservation of fisheries resources and fisheries management and development.”<sup>9</sup> These principles and criteria are to be used as “an instrument of reference” to improve government policies and as “guidance” for the formulation of international agreements, as well as other policy tools.<sup>10</sup>

The Caddy checklist represents an early (1996) effort to elaborate on the Code and apply it. Unlike the Code, the checklist was not formally developed or approved by the FAO Committee on Fisheries and therefore is not an international standard or generated by multi-stakeholder process, but a tool that its author recommended using in two ways:

- “(1) as a focus for discussion by those concerned with management of a given fishery, to be sure that the relevant issues are touched upon in designing a fisheries management system.
- (2) [as] a check list for seeing that the fishery in question meets the requirements of the Code, which can be updated regularly to see whether progress is being made in approximating the fisheries management system currently in place to its provisions.”<sup>11</sup>

A few provisions do indicate that FAO and Caddy, respectively, may have considered and approved of certain non-governmental uses of the Code and checklist. One very general objective of the Code is to provide “standards of conduct for all persons involved in the fisheries sector”<sup>12</sup>; while the Checklist indicates that it “can be used for an evaluation by the managers themselves or those involved in certification of a fishery as 'responsible', as defined under the Code.”<sup>13</sup> But these provisions do not support the direct use of these documents as sufficient certification standards. “Standards of conduct” are not certification standards, and “used for an evaluation” by a certifier<sup>14</sup> is not synonymous with “used as a certification standard.” Rather, these objectives simply suggest that some uses of the Code and checklist *toward* certification are valid – for example, they can inform the determination of what issues need to be covered in certification standards.

This view is further strengthened by FAO’s subsequent (2009-2011) development and FAO member countries’ endorsement of the three sets of Guidelines covering all aspects of ecolabelling and certification for inland and marine capture fisheries and aquaculture. These recent, detailed documents cite, elaborate on, and are clearly intended to implement the Code of Conduct, and they now must inform the meaning and proper interpretation of its provisions.

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<sup>9</sup> Code of Conduct, Article 2.

<sup>10</sup> Id.

<sup>11</sup> Caddy checklist, at 2.

<sup>12</sup> Code of Conduct, Article 2(j).

<sup>13</sup> Caddy checklist, at introduction.

<sup>14</sup> Throughout this review, the term “certifier” is synonymous with “certification body” or “conformity assessment body” as the entity that is engaged to assess conformity with the certification standard and thereby to determine if the client fishery, aquaculture producer, or industry sector can be certified.

For example, the Aquaculture Guidelines “provide guidance for the development, organization and implementation of credible aquaculture certification schemes” – a goal that is clearly distinct from serving as standards for actual certification.<sup>15</sup> As discussed further below, all the Guidelines require the use of specified processes and measurable performance indicators to ensure consistent decisions – protections that are demonstrably lacking in the Code and checklist taken alone.

Independent organizations and governments alike have been using the Code, checklist, and Guidelines as intended; for example, some certifiers and ecolabels, such as the Marine Stewardship Council and Friend of the Sea, assert that their independently derived standards and other aspects of their certification systems conform to the applicable FAO Guidelines. Similarly, many governments and independent organizations have used the Code of Conduct and checklist to assess the strengths and weaknesses of fisheries management regulations and to conduct fisheries improvement projects.<sup>16</sup> While the conformity of these initiatives to the applicable FAO Guidelines or to the Code of Conduct in any particular case may be debated, these are legitimate, intended uses of the FAO documents.<sup>17</sup>

In contrast, some recent efforts improperly advertise the use of the Guidelines, Code of Conduct and checklist as certification standards that can be applied directly to client fisheries or aquaculture producers.<sup>18</sup> Since the FAO documents were not intended to be used in this way, no certification system relying on them can be considered credible unless it is also based on a separate standards development and implementation process that conforms to both the substantive and procedural elements identified in the FAO Guidelines. Such an effort would need to address and create its own measurable standards that interpret each substantive topic listed by FAO. Procedurally, it would need to meet all of the institutional and procedural requirements for credibility (e.g., transparency, no conflict of interest) during the standards development process and during implementation.

As discussed in detail below, Global Trust’s “FAO-based” certification process does not meet these fundamental elements of the Guidelines, whether it chooses to characterize its standard as “no more and no less than the FAO Code”<sup>19</sup> or as a separately developed certification standard derived from FAO documents.

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<sup>15</sup> Aquaculture Guidelines, ¶ 6. See also Marine Capture Guidelines, ¶ 1 (“These guidelines are *applicable to ecolabelling schemes* that are designed to certify and promote labels for products from well-managed marine capture fisheries”) (emphasis added).

<sup>16</sup> See, e.g., Reynolds and Greig (eds.), Using questionnaires based on the Code of Conduct for Responsible Fisheries as diagnostic tools in support of fisheries management, FAO/Fishcode Review No. 21 (2007).

<sup>17</sup> FAO members are also currently discussing whether FAO should develop benchmarking criteria that would allow certification schemes to be assessed for conformity with the Guidelines. See Report of the Expert Consultation to Develop an FAO Evaluation Framework To Assess The Conformity Of Public And Private Ecolabelling Schemes With The FAO Guidelines For The Ecolabelling Of Fish And Fishery Products From Marine Capture Fisheries, FAO Fisheries and Aquaculture Report No. 958 (2010).

<sup>18</sup> ASMI, “Committed to responsible fishing”, *Seafood Business* (advertisement), June 2012 (on file with author).

<sup>19</sup> Global Trust, “FAO-Based Responsible Fishery Management Certification Full Assessment and Certification Report for the US Alaska Commercial Salmon Fisheries” (April 2011), p. 4.

## **FAO does not undertake the responsibilities of a standard-setting body or certification scheme owner.**

Under the various sets of FAO Guidelines, standard-setting organizations and certification scheme owners<sup>20</sup> are subject to requirements related both to standard-setting activities and to operation of the certification system. Standard-setting organizations must not only set the standards, but review them at “regular published intervals” and revise them if appropriate.<sup>21</sup> They must publish a work program at least semiannually<sup>22</sup> and must ensure “appropriate communications and outreach regarding the standard and the standard setting process, and ensuring that the standard and associated documents are available.”<sup>23</sup>

In addition, scheme owners are responsible for, but must remain independent of, the accreditation and certification processes.<sup>24</sup> Under the FAO Guidelines, scheme owners are prohibited from undertaking either certification or accreditation<sup>25</sup> but must formally arrange for accreditation by independent specialized accreditation bodies, which then accredit certifiers.<sup>26</sup> In other words, a certifier cannot select any accreditation body – it must only use an accreditation body that has been identified by the scheme owner, and only the scheme owner, as being authorized to accredit certifiers against its standard and scheme requirements.<sup>27</sup>

Simply put, FAO is not a standard-setting organization or certification scheme owner. It maintains the Guidelines, Code of Conduct and checklist on its website, but does not undertake any of the other tasks that its own Guidance requires of standard-setters. Moreover, FAO has not arranged for accreditation of certifiers that would apply the FAO Guidelines or Code of Conduct. As a result, not

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<sup>20</sup> A “certification scheme owner” can be either the standard-setting entity itself, or another organization that adopts a standard developed elsewhere and oversees certification to it. In either case, to be considered credible “independent, third-party certification,” the scheme owner must remain separate from, and independent of, both the certifier and the client and any related entities.

<sup>21</sup> Marine Capture Guidelines, ¶¶ 44, 60; Aquaculture Guidelines, ¶ 82.

<sup>22</sup> Marine Capture Guidelines, ¶ 50.

<sup>23</sup> Aquaculture Guidelines, ¶ 68.

<sup>24</sup> “Certification” bodies assess whether a specific fishery or group of enterprises conforms to an existing standard. They cannot validly certify to a standard unless accredited to do so by an accreditation body previously approved by the standard owner. “Accreditation” serves to assure that certification bodies are impartial and competent to assess conformity to a particular standard.

<sup>25</sup> E.g., Aquaculture Guidelines, ¶ 63 (“It is essential that the owner of a private or non-governmental certification scheme is not directly engaged in its operational affairs, i.e. undertaking accreditation or certification, to avoid conflicts of interest.”).

<sup>26</sup> Marine Capture Guidelines, ¶ 39 (“The owner of an ecolabelling scheme should engage a separate independent specialist accreditation body to take on the task of accreditation of certification bodies on its behalf.”); Aquaculture Guidelines, ¶ 63 (“The owner or developer of a private or non-governmental certification scheme *must have a formal arrangement* with a separate independent specialized accreditation body or entity to take on the task of accreditation of certification bodies on its behalf” (emphasis added)).

<sup>27</sup> This formal arrangement between the standard owner and the accreditation body can be expected to include accreditation of both substantive capacity to evaluate compliance with the standard and the ability to meet generic requirements for certification bodies, such as those established by the International Organization for Standardization (ISO). Thus, accreditation to ISO Guide 65 or similar standards is insufficient to ensure credibility unless the formal arrangement between the standard owner and the accreditation body both exists, and stipulates no other requirement beyond ISO standards.

only do its documents not constitute standards, but FAO cannot credibly be considered a scheme owner. Even if the FAO documents *are* treated as standards, no certification scheme based on them can be credible unless that scheme is owned by a third party that carries out ongoing standard-setting responsibilities, arranges for accreditation, and performs the other duties required of an independent scheme owner.

Global Trust's certification process provides a good example of the conflicts of interest that may arise from attempts to certify conformity to the FAO documents. Regardless of whether Global Trust or its clients are construed as standard-setter or scheme owner, the "FAO-based" system does not conform to the Guidelines. In practice, Global Trust claims not to be a scheme owner,<sup>28</sup> but it appears to perform scheme owner duties, including arranging for accreditation to certify conformity with the "FAO-based Responsible Fisheries Management" standard.<sup>29</sup> To the extent it acts as the scheme owner, however, it cannot also carry out conformity assessment without violating the bedrock principle that certification scheme owners, accreditation bodies, and certifiers must be mutually exclusive.

On the other hand, if Global Trust is not acting as the certification scheme owner but solely as a certifier, it is either acting without any scheme owner – and therefore lacks a fundamental element of credible certification – or its own client fisheries or aquaculture groups (or other interested parties, such as trade associations) are acting as the scheme owner for each conformity assessment. As evidence of the latter scenario, ASMI and the Icelandic Fisheries Association have each developed their own ecolabels, and CAIA has solicited public comments on its aquaculture certification process. But this system allows the client (or its trade association proxy) to set and maintain its own certification standard – a situation that simply cannot be considered independent, third-party certification. Further, the clients to date have not fully conformed to the requirements of scheme owners,<sup>30</sup> and generally are not conforming to the Guidelines.

**Neither the FAO Code and Guidelines nor Global Trust's "translation" of them contains the measurable performance indicators necessary for certification.**

The definition of "standards for certification," set forth in the FAO Guidelines make clear that none of the Guidelines Code, or checklist qualify as certification standards. Under the Marine Capture Guidelines, a "standard for certification" is defined, in part, to be "requirements, criteria and

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<sup>28</sup> Global Trust, Marine Certification Centre, [http://www.gtcert.com/seafood\\_trust](http://www.gtcert.com/seafood_trust) ("Global Trust is NOT a standards owner").

<sup>29</sup> Irish National Accreditation Board, Accreditation Certificate: Global Trust Certification, Ltd, <http://www.inab.ie/directoryofaccreditedbodies/certificationbodiesproductcertification/6002.pdf> (accrediting Global Trust to assess against the "Conformance Criteria for FAO-Based Responsible Fisheries Management v 1.2").

<sup>30</sup> While a technical point, it is illuminating to consider that if each client (or trade association) in fact owns its own scheme, Global Trust would be required to obtain specific accreditation to conduct conformity assessment to that specific scheme in each individual fishery. This would be nonsensical and has not happened; rather, Global Trust is accredited to certify to its "Responsible Fisheries Management" standard in general, not as applied in a single fishery or country. Seen in this light, the argument that each trade association "owns" its scheme would appear to be a pretense.

performance elements in a hierarchical arrangement. For each requirement, one or more substantive criteria should be defined. For each criterion, one or more performance elements should be provided for use in assessment.”<sup>31</sup>

While the Guidelines, Code and checklist identify minimum substantive requirements and criteria that should be addressed in certification schemes and in responsible fisheries, they do not establish the required performance elements or thresholds that are needed for a certification standard. Rather, their guiding principles and checklist items are less detailed than needed for certification of performance and stand at a hierarchical level above certification. As the Caddy checklist recognizes, “there are many pitfalls in attempting to interpret the 'correct' response to, and appropriate overall weighting for, a given question, depending on the definitions followed as well as the point of view.”<sup>32</sup> The absence of performance-based elements that could be used directly for assessing conformity again means that the Guidelines, Code and checklist cannot serve as certification standards and that further standard-setting is required for certification.

Existing “FAO-based” direct certification efforts simultaneously acknowledge and deny the need to interpret the FAO documents before they can be used for certification. The proprietary “FAO-Based Conformance Criteria” that Global Trust uses for fisheries certification admittedly “represent a *technical translation* of these normative references to *facilitate effective measurement* of fisheries” against the Code; “render[] the implications of the Code *more explicit*”; and “reform” its provisions “as a series of *specific requirements*.”<sup>33</sup> Whether described as “translation,” “rendering,” or “reforming,” Global Trust’s interpretive work necessarily includes elaborating the performance elements not present in the FAO documents and clearly falls under the Guidelines’ definitions of standard-setting – thus triggering procedural and conflict-of-interest requirements that neither Global Trust nor its clients have met.<sup>34</sup> Yet Global Trust and its clients seek to avoid these requirements by asserting that the conformance criteria are “directly derived from” the Code of Conduct and Marine Capture Guidelines<sup>35</sup> and constitute “no more and no less than the FAO Code.”<sup>36</sup> In addition, ASMI claims that its fisheries are

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<sup>31</sup> Marine Capture Guidelines, ¶ 22.

<sup>32</sup> Caddy checklist, introduction. The Caddy checklist is phrased in terms of questions intended to be answered with “yes,” “some,” or “no.” As indicated by the presence of “some” as an answer for these questions, these questions are not measurable or precise, but instead require substantial interpretation – i.e., standard-setting – as well as identification of a scoring algorithm for determination of when or whether a fishery can be certified, before certification is possible.

<sup>33</sup> Global Trust Conformance Criteria, p. 3 (emphasis added).

<sup>34</sup> The contradiction is illustrated by Global Trust’s public description of its CAIA aquaculture certification, which freely admits: (1) that the FAO Code requirements and Aquaculture Guideline principles are “Starting Points for Analysis – NOT Endpoints”; (2) that Global Trust’s work entails developing “Expanded Substantive Criteria”; and (3) that the end result will be “a Canadianized standard.” See “Proposed FAO Assessment Approach,” PowerPoint presentation by Cormac O’Sullivan of Global Trust Certification (March 10, 2012), available at <http://bit.ly/KWMBjV>. But to properly elaborate a “Canadianized standard,” even by assessing existing regulations and practices, necessarily constitutes “standard-setting” under the FAO definition and triggers additional requirements under the Aquaculture Guidelines, which call for balanced participation and an appropriate consultation forum, among other things. Aquaculture Guidelines, ¶¶ 76-77.

<sup>35</sup> Global Trust FAO-Based Responsible Fisheries Management Certification Program, Conformance Criteria for the Assessment of Fisheries, Version 1.2 (September 2011), p. 1.

<sup>36</sup> Global Trust, “FAO-Based Responsible Fishery Management Certification Full Assessment and Certification Report for the US Alaska Commercial Salmon Fisheries” (April 2011), p. 4.



“certified to the United Nations Food and Agriculture Organization’s (FAO) Guidelines for Responsible Fisheries Management (RFM)<sup>37</sup> and Guidelines for Ecolabelling of Fish and Fishery Products from Marine Capture Fisheries. This internationally recognized standard was developed with the participation of leading fishery biologists, environmental organizations and fishery managers representing more than seventy countries.”<sup>38</sup>

In other words, Global Trust and its clients assert, more or less explicitly, that their fisheries are certified directly to an FAO standard and that because the process for creating the FAO documents was credible, their conformance criteria are credible.<sup>39</sup> This argument is self-defeating, however – the conformance criteria cannot be *both* an interpretation *and* a direct implementation of the FAO documents. Moreover, it cannot reasonably be squared with the Global Trust statement that the “FAO based” certification “in no way implies that the FAO has endorsed this certification model.”<sup>40</sup>

Substantively, the FAO Guidelines expand on what kinds of performance elements must be developed and included for a certification scheme to be credible. Under the Marine Capture Guidelines, “Criteria and related measurable performance indicators and a corresponding monitoring system should be established in order to assess the conformity of the fishery concerned with the requirements and the criteria of the ecolabelling scheme.” In addition, “Standards comprise quantitative and qualitative indicators of the governance system or management regime of a fishery as well as of its outcome in terms of sustainable fisheries and conservation of marine fishery resources and related ecosystems.”<sup>41</sup>

The Aquaculture Guidelines likewise require measurable performance criteria and indicators tied to the certification scheme’s stated objectives: “Development of certification schemes should consider the importance of being able to measure performance of aquaculture systems and practices, and the ability to assess conformity with certification standards.” Further, “Standards provide the necessary requirements, the quantitative and qualitative criteria and the indicators for certification of aquaculture. Standards should reflect the objectives, results and outcomes that are being pursued through the certification scheme to address animal health and welfare, food safety, environmental integrity and/or socio-economic aspects in aquaculture.”<sup>42</sup>

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<sup>37</sup> FAO has never approved a document by this name. This statement appears to conflate the FAO Code of Conduct for Responsible Fisheries with the Global Trust “FAO-based Responsible Fisheries Management Certification Program Conformance Criteria” – i.e., the standard to which Global Trust is accredited for conformity assessment.

<sup>38</sup> ASMI, “Committed to responsible fishing”, *Seafood Business* (advertisement), June 2012 (on file with author).

<sup>39</sup> ASMI, ISO Accredited, at <http://sustainability.alaskaseafood.org/iso> (“There are some agenda parties that seem surprised that the FAO documents have been accepted as a standard for accreditation. However, due to the nature and integrity of the FAO’s development process for the Code of Conduct and of the supporting FAO interpretation guides, the criteria from the FAO reference documents have been accepted as suitable and fit for ISO accredited certification by members and standards experts of the International Accreditation Forum.”)

<sup>40</sup> Global Trust, FAO-Based Responsible Fisheries Management Certification: Frequently Asked Questions, at [http://www.gtcert.com/userfiles/files/FAO%20based%20FAQ\\_Feb\\_2012.pdf](http://www.gtcert.com/userfiles/files/FAO%20based%20FAQ_Feb_2012.pdf).

<sup>41</sup> Marine Capture Guidelines, ¶¶ 27, 40.

<sup>42</sup> Aquaculture Guidelines, ¶¶ 18, 66.

Though their wording differs, both sets of Guidelines focus on creating measurable, quantitative and qualitative performance indicators and on tying those indicators to the certification scheme's objectives. In the absence of such detailed criteria, any standard is unreasonably vague and cannot be considered credible. Yet while the FAO Guidelines recognize the central importance of measurable performance indicators, neither set of Guidelines itself provides such indicators.

To take just one example, the Aquaculture Guidelines provide that “[e]xotic species are to be used only when they pose an acceptable level of risk to the natural environment, biodiversity and ecosystem health.”<sup>43</sup> Without a further definition of what level of risk is “acceptable,” certification to this criterion would be vague and up to the complete discretion of the certifier. The FAO Guidelines’ insistence on the use of “measurable” performance elements is intended to ensure that certification systems go beyond such vague statements. And many systems have done so, sometimes with explicit reference to the Guidelines. For example, the final draft standard of the Salmon Aquaculture Dialogue (“SAD”) elaborates three specific, verifiable indicators that restrict the use of non-native species. As explained in the rationale for these indicators:

The SAD believes these standards are in line with FAO guidelines that permit the culture of non-native species only when they pose an acceptable level of risk to biodiversity. This standard does not permit introductions of non-native salmonids, unless farming of the species already occurs in the area, or a completely closed production system is used, or all cultured fish are sterile.<sup>44</sup>

In contrast, efforts to use the FAO Guidelines directly for certification employ similar indicators at best implicitly, and at worst not at all. The Canadian Aquaculture Industry Alliance’s draft “FAO Aquaculture Benchmark Assessment Tool” simply repeats the Aquaculture Guidelines language without further definition, instead identifying relevant legislation and indicating farm compliance tests based on associated permits and reports.<sup>45</sup> This approach attempts to suggest that farms could be certified as long as their use of exotic species is sanctioned by Canadian law. In effect, the CAIA and Global Trust process is interpreting the Guideline phrase “an acceptable level of risk” to mean “a level of risk acceptable to the Canadian government,” regardless of the law’s content, practical outcomes, or future direction. Without the independently developed, measurable performance indicators required by the FAO Aquaculture Guidelines, such a certification system cannot be considered credible.<sup>46</sup>

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<sup>43</sup> Aquaculture Guidelines, ¶ 49.

<sup>44</sup> Salmon Aquaculture Dialogue, Final Draft Standards for Responsible Salmon Aquaculture, at 3.2. The present paper makes no claim about whether the SAD standards are adequate, but uses this provision as an example of the appropriate process for interpretation of the Guidelines and Code during standard-setting.

<sup>45</sup> CAIA, FAO Aquaculture Benchmark Assessment Tool, p.15.

<sup>46</sup> This discussion is only intended to illustrate that CAIA’s process is circular and fails to conform to the FAO Guidelines; it makes no judgment about the substantive adequacy of Canadian law related to this or other topics.

Global Trust’s attempts at “FAO-based” certification of capture fisheries follow a similar pattern. The Global Trust “Conformance Criteria” for its “Responsible Fisheries Management Certification System” (RFM Standard) are built on the very general language of the FAO Code of Conduct, Caddy checklist, and Marine Capture Guidelines. To date, it has carried out certification to this RFM standard without specific elaboration of measurable performance indicators or additional guidance to assist in interpretation of the FAO-derived language. Instead, Global Trust determines conformity to the RFM Standard based on expert confidence that each of its conformity criteria is being met in each specific case.<sup>47</sup> But in the absence of measurable performance elements, this system pushes the standard-setting authority down to a case-by-case level, leaving the final decision on whether a fisheries management system is adequate to meet each criterion and to achieve overall certification (and on how to determine such adequacy) to the virtually unfettered discretion of the certifier itself. Not only is this system bound to lack consistency in interpretation of the standard, it also inappropriately blurs the boundaries between certification and standard-setting. This confusion of the independent roles of standard-setters and certifiers is endemic to the Global Trust certification systems for both capture fisheries and aquaculture.

## **Conclusion**

This review has shown that the FAO Guidelines and Code of Conduct are not certification standards and cannot be used as such without additional standard-setting to establish measurable performance elements – a process that also must conform to the FAO Guidelines in order to be credible. The “FAO-based” certification schemes associated with Global Trust have not done so, to date. As a certifier, Global Trust cannot also undertake standard-setting without creating a conflict of interest that contravenes the Guidelines. If the standard was developed and owned by its clients, the scheme lacks independence. And in either case, the conformance criteria do not conform to the Guidelines because they lack measurable performance indicators and were not created through a Guidelines-compliant process. As a result, this certification system lacks credibility; both its standards and its process fail to meet the minimum requirements for independent, third-party certification set out by the international community – ironically, the very requirements upon which the Global Trust system claims to be founded.

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<sup>47</sup> See, e.g., Global Trust, *FAO-Based Responsible Fishery Management Certification Full Assessment And Certification Report for the US Alaska Commercial Salmon Fisheries* (2011).