



DRAFT MINUTES

17th Meeting of Working Group 2

**North Atlantic Agreements and Regional Fisheries Organisations
Thursday 22 October 2015, 14:00-18:00 h**

Hotel Martin's Central. Boulevard de Charlemagne 80. Brussels (Belgium)

**Elected Chair/Outgoing Vice Chair: Iván López
Elected Vice Chair: Jane Sandell**

1. Welcome and apologies by the Chairmanship.

Mr. López, Acting Chair of the WG2, opens the meeting by welcoming all those present and conveying apologies received from Jane Sandell and Marc Ghiglia.

A round of introduction of all the attendants is carried out and is followed by a minute of silence observed in memory of the recently deceased Antonio Cabral, Chairman of the LDAC.

2. Approval of the minutes of the last WG2 meeting (Brussels, 23 April 2015).

The minutes of the last meeting held in Brussels on 23 April 2015 are formally adopted after being circulated amongst all WG2 membership and being accordingly updated to reflect all views and statements made by its members.

3. Adoption of the agenda.

The agenda is adopted without any additions or changes.

4. Elections of Chair and Vice Chair of WG2.

4.1. Background

The Acting Chair, Mr Iván López, reminded the attendees that the current WG2 Chair, Mr. Nigel Atkins, is now retired and, for that reason, the Secretariat launched a written procedure for electing a new Chair earlier in the year. Mr Lopez gives then the floor to the LDAC Executive Secretary, Alexandre Rodriguez, who provides an overview of the electoral process followed, the expressions of interest received and the procedure for carrying out the elections for the Working Group 2 seats (Chair and Vice Chair).

The Secretary explains that there are 25 paying member organisations of WG2 as per 1 June 2015 (beginning of the financial year), the reference date for the purpose of the electoral census. Regarding the composition, there are 16 members of the catching sector, 1 trade union organisation (ETF) and 6 NGOs.

Once it is verified that the necessary quorum is reached (50% of the 25 WG2 member organisations) to be able to take decisions, the electoral table is set up with the presence of Juan Manuel Liria (LDAC Acting Chair), Raúl García (Vice-Chair) and two members of the Secretariat (Marta de Lucas and Alexandre Rodríguez).

The delegations of votes received from absent members via notification in writing prior to the meeting to the Secretariat are reported:

- Mr. Haraldur Grétarsson (DHV) delegates his vote to Mr. Emil Remisz (NAPO);
- Ms. Jane Sandell (UK Fisheries Ltd.) delegates her vote to Mr. Barrie Deas (NFFO);
- Mr. Mike Park (SWFPA) delegates his vote to Mr. Barrie Deas (NFFO);
- Mr. Marc Ghiglia (UAPF) delegates his vote to Ms. Caroline Mangalo (CNMPEM).

The Secretariat launched a call of interest in writing amongst all WG2 members and as a result the following expressions of interest were received:

4.2. Election of Chair:

The Executive Secretary subsequently informs that there was only one expression of interest for the WG2 Chair in the person of Iván López (AGARBA). There is no need therefore to do a vote unless someone objects to this candidate.

DECISION: All Working Group 2 members present and represented do not raise any objections and therefore Mr. Iván López is elected Chair of WG2 by unanimity.

4.3. Election of Vice-Chair:

For the position of Vice-Chair, there were two expressions of interest received within the designated deadline: one from Jane Sandell (UK Fisheries Ltd. - fishing sector) and one from Bjorn Stockhausen (Seas at Risk - other groups of interest).

A secret vote is taken in a ballot box in conformity with article 10 of the LDAC rules of procedure. The Secretary individually calls on the main representative of each of the member organisations present and/or with delegation of vote. The votes are counted with the following results:

- 20 votes are casted, all of them valid and with no blank votes, of which:
 - 12 votes are for Jane Sandell;
 - 8 votes are for Bjorn Stockhausen;

The relevant electoral minutes are filled in and signed.

DECISION: Jane Sandell is elected as Vice-Chair of Working Group 2 by majority of votes.

5. Deep Sea Access Regime: state of play

The DG MARE representative, Ms. Maja Kirchner, provides a summary overview of the state of play of the discussions on the proposal for Regulation for a new Access Regime for Deep Sea Species. The Luxembourg Council Presidency made progress in the second half of 2015 on developing a Council Common Approach that will be subsequently submitted to the European Parliament. It is expected that at the end of October/early November, a Working Group meeting of the Council will take place, and then the issue will be dealt with at COREPER level with the aim of having it adopted by the Plenary before the end of the year to start the procedure on the Parliament with the Dutch Presidency.

The new elements or amendments proposed to the EC proposal are:

1. A depth limitation of 800 metres from the water surface for any deployed trawl gear.
2. Delimitation of a footprint area with a map of fishing grounds for deepsea fleets based on a reference period to be determined depending on several data (to be decided: VMS, logbooks...). Those nursery hotspots identified as “virgin areas” should be preserved and closed to fishing boats targeting deepsea stocks. Also exploratory fishery out of those footprint areas will be only possible provided there is an impact assessment that ensures there is no adverse impact on the seafloor.

Ms. Kirchner reminded that, according to a recent study sponsored by the European Commission, the deep-sea species make up to 2% in value of catches of EU, with some local cities depending to a higher extend on the landing of these species in regions such as Boulogne, Lorient, Azores, Madeira or parts of northern Spain. The Council and EP are not talking anymore about phasing out bottom trawling or gillnetting, establishing only the above mentioned limitation of fishing below 800 m. This figure is based on studies on the economic input and cost made in fuel for fishing below that depth.

Questions from members:

Bjorn Stockhausen (Seas at Risk) asked about the territorial scope of the Regulation, and if it will be possible to carry out impact assessments inside the footprint.

Ms. Kirchner clarified that the scope of the Regulation is to cover EU waters only, excluding NEAFC and international waters. Regarding the IA, this is only foreseen for exploratory fishing if you want to go outside the footprint area.

José Antonio Suárez-Llanos (ARVI) asked for a tentative timeline for final adoption of the Regulation. Ms. Kirchner replied that it will certainly not be before the end of the Luxembourg presidency. The most likely scenario will be a trilogue in the first quarter of 2016, provided there is a Council General Position. It is expected that the text is adopted sometime in 2016.

Iván López (AGARBA) asked about the availability of socio-economic data to underpin the IA of the delimitation of the fisheries footprint on the fishing fleet. Ms. Kirchner explained that there is an initial IA and, if requested by the European Parliament, there will be a more developed one at a later stage.

Juan Manuel Liria (FEOPE-CEPESCA) expressed his support to the implementation of the UNGA Resolution 61/105, to protect those areas where there is evidence of VMEs, both in the high seas where there are no RFMOs, as Spain has done already for the ASW, and in international waters subjected to the rules of RFMOs. which sets a footprint for VMEs where there are no RFMOs, as tThe latter have their own specific rules (e.g. NAFO, NEAFC) and have done already IAs.

Bjorn Stockhausen was concerned by the fact that if scope is reduced only to EU waters, there would be a mismatch and lack of coverage of other areas such as OSPAR where there are already comprehensive studies on VMEs. He also asked about the reference periods to be established, what will be the exact years considered.

Ms. Kirchner replied that the reference period years have been left deliberately open and in square brackets. The EC has proposed to end the reference periods in 2012 as this was the year where the proposal for Regulation was published.

Regarding the geographical coverage, it has been agreed by the Council under the Luxembourg Presidency. The EP has not agreed on this yet, and the EP text in fact has a wider coverage beyond the EU waters. NEAFC closures will not be covered by this Regulation. She reminded of the international obligations contracted by the EU as party of the RFMOs.

ACTION: The LDAC will follow the progress made at the legislative process and the development of the trilogue once it is in place in future WG2 meetings.

6. North Atlantic fisheries bilateral agreements EU - Norway, Faroe, Iceland, Greenland.

a) EEA Coastal State Negotiations in 2015

The EC representative, Manuel Catalán, informed that the European Economic Area (EEA), is composed of Norway, Iceland, Liechtenstein and Switzerland. Norway is the first importer of the EU in terms of fish volume and the FTA is submitted to certain references and species.

The EC representative explained that the Commission is currently negotiation the new EEA agreement for a duration of 7 years. The EC envisages to have a common approach in the two key areas of negotiations with Norway which are related to two separate instruments:

1. Market access and 2. Fisheries.

The aspiration is to make both coherent and put them in balance.

There was a decision taken by the EU DG REGIO on the allocation of financial contributions with concessions of Norwegian products. There was a specific protocol to fish concession to Norway and to Iceland. In April 2014, both the financial mechanisms and the fishing concessions were finished and disappeared. Norway came with different kind of request,

expanding the range of products out of the current concessions, moving from raw products to more processed products. The result was Norway moving from 7 to 10 TRQs Iceland moving from 3 to 4 TRQs.

b) “Export fee” charged by Norway

Hjálmar Vilhjálmsson (ELDFA) explained the “export fee” issue which is effectively a taxation issue. It is his view that this is not a fee on first sale as claimed by Norway, but a contribution to a mutual public fund which helps Norway to compete with EU sector in EU market. He considers this as absolutely not fair and questions even if there is legal basis for this during the course of negotiations for an EEA agreement in general.

He argues that the Norwegian vessels are not paying any tax in the EU so there is no reciprocity here and therefore this connection with the EEA agreement should simply be removed. This is the third time that the EEA agreement expires and the situation has been standing for a number of months facing this tax. This is a matter of trade policy and not fisheries.

The EC representative noted that the export fee is considered a transit fee or a levy on first sale in accordance to a Norwegian Royal Decree adopted in 2006. The Norwegian authorities acknowledged that there was a grey area in terms of its compatibility with WTO standards, as it obliges that all fish landed in a Norwegian port has to go through first sale in Norway.

The waiver for the non-application of the fee will only be completed once Norway has the new fishing quotas agreed, it is a sort of concession that Norway will give in case they are satisfied with market access conditions. This means that once the quotas will be implemented the exception or concession to transit fee will apply and the EU operators will come back to the same situation that into 2013 and 2014.

Iván López agreed with Hjálmar that this causes distortions in the EU free market, as you have not only to go through first sale in Norway but also through a Norwegian agent or company. This is an exception to the concession difficult to justify and the EU should object to it. He asked what the rationale behind this is as this is not an export but a transit and it creates a de facto discrimination that seems to clash with existing EU trade policies.

The EC representative reiterated that EEA is a vast treaty going beyond purely commercial policies. It is a document that contains a number of liberties and exceptions related to the EEA, and needs timing and commitment at high political level by all parties to change it. In this sense, the newly appointed Director General of Fisheries has extensive experience and knowledge in trade policy and WTO laws.

José Antonio Suárez-Llanos suggest to ask for the dispute resolution panel of the WTO if the EU perceives that there are effective obstacles to trade providing sound evidence and data.

ACTION: The LDAC will consider working on a letter requesting to the Commission that the Norway fish export fee is disconnected from the negotiations of the EEA agreement and that the EU fishing sector mobilises and claims back the money charged by Norway on the basis of lack of legal grounds or justification to this fee.

c) Svalbard

The WG2 Chair referred to a letter of response submitted by the European Commission to a request from a MS regarding Atlanto-Scandian herring stock (ASH), arguing that any stock should be equally treated by all Paris Treaty signatories and therefore the EU should have a share of this fish. This seems to be a change of interpretation by the Commission, or at least a different one for a single stock (ASH). A parallel example might be drawn for the haddock stock in Norway, on the basis that it is biologically the same stock so the EU could take the same share inside and outside the Norwegian EEZ.

The WG2 members agreed to seek clarification from the Commission on this new interpretation and consider the possibility of raising this as case of international law (WTO).

ACTION: The LDAC will draft a letter asking for clarification to the Commission on the situation on Svalbard for shared stocks based on the recent position taken for ASH.

d) Communication between LDAC and Commission on topics related to WG2

The WG2 Chair regretted the fact that the EU negotiation team was not able to attend the last LDAC WG2 meetings despite the efforts made and invitations issued. There seems indeed to be a lack of communication in the last year regarding who is in charge of the negotiations at EU level with Norway or NEAFC.

The DG MARE coordinator of the Advisory Councils, Ms. Evangelia Georgitsi, made it clear that the DG MARE Unit C1 is the one dealing with North Atlantic bilateral agreements and that there is a busy negotiations team with constant changes of agenda subject to availability and timing of negotiations with third countries. This is the reason why it is quite difficult to foresee in advance if they will be able to attend a LDAC meeting even if they might have confirmed beforehand.

ACTION: The Secretariat will be regularly in contact with the C1 unit (Maritime policy Atlantic, outermost regions and Arctic) and will look to adapt the dates of next WG2 meetings to the availability/agenda of the negotiation team dealing with North Atlantic agreements so they can attend.

7. North West Atlantic Fisheries Organisation (NAFO)

a) Report on work progress made by the LDAC in the 2nd quarter of 2015; and

The DG MARE representative, Manuel Carmona, provided an overview of NAFO technical meetings held in the second and third quarter of 2015 as well as the European Commission's role and thanked the LDAC for their input and contributions in the process. He mentioned that there were discussions at the Joint Fisheries Commission – Scientific Council Working Group on Catch Reporting in relation to discards data. It was decided at the Group to take into account only historic discard data coming from scientific surveys due to poor reporting and registration of discard in logbooks. There is now an obligation to report on a haul by haul basis.

Bjorn Stockhausen (SAR) requested that data status in discards improves.

b) Outcomes of NAFO Annual Meeting 2015 (21-25 September 2015)

The WG2 Chair briefly summarized the content of the LDAC opinion¹ and asked the Commission how the LDAC could be more proactive and which areas of work might be relevant for the European Commission in the provision of advice to assist with the technical preparations.

The EC representative replied that the Commission would like to have a LDAC final and adopted advice if possible 3-4 weeks in advance to the Annual Meeting (i.e. by the end of August). Mr. Carmona thanked the efforts of the LDAC team and members to continue with the work initiated by Antonio Cabral and avoid disruptions in the issuing of the annual advice for 2015. In his opinion, the tables with the TACs were quite complex to understand and encouraged the LDAC drafting group to improve the layout and presentation in order to focus on key points rather than providing a historical context.

Juan Manuel Liria reminded that it is difficult to start drafting the advice until they do not have access to the official report and recommendations issued by the NAFO Scientific Council. He encouraged the Commission to share this information as soon as it is made public. He also committed on behalf of the drafting group to do their best to frontload work that is not directly related to the deliberations of the Scientific Council.

¹ LDAC Advice on NAFO Fishing Opportunities for 2016: <http://ldac.chil.me/download-doc/99111>

Bjorn Stockhausen asked the Secretariat and the authors to circulate the first drafts earlier in time and improve the handling of the drafts to the Commission make it clear that they are not a final position.

He asked for the exact date when the final advice was submitted. He also asked to reflect minority positions clearly where there is disagreement.

The Executive Secretary, Alexandre Rodriguez, replied that three versions of the advice were circulated amongst the relevant WG2 members and that the advice was adopted by the Executive Committee on 18 September and submitted by email to the DG MARE on 19 September, i.e. two days before the start of NAFO Annual Meeting. He also clarified that in those areas of the advice where there were disagreements, they were reflected as minority positions as it can be seen for example in item 6.2 on “Vulnerable Marine Ecosystems”².

The EC representative added that the DG MARE team was aware that the version submitted earlier in September were drafts and there were areas of disagreement where further discussion was required. However, it was useful to get an idea of the items discussed.

c) Way forward – items for discussions

• Landing Obligation

Regarding the implementation of the EU landing obligation, there is no evidence so far on conflict with NAFO rules but the Commission is considering to adopt a delegated act allowing an exemption/derogation if it is in contradiction with articles 6, 12 y 14 with start date on 1/1/2017 (regulatory discards related to MLS and by-catches).

ACTION: If justified by the EC study to be published soon, the LDAC will request that a specific derogation is made to the application of the landing obligation in NAFO waters where it enters into conflict with NAFO rules allowing to discard, on the basis of article 15.2 of CFP Regulation.

• Oil and gas activities

The EC representative mentioned that there are ongoing discussions by the Canadian government on a public consultation on impact of oil and gas prospection activities to be developed within the Canadian EEZ (e.g. Shell has been given authorization to drill in Nova Scotia continental shelf). There are ongoing discussions on possible mitigation measures and areas for cohabitation with fishing activities.

² See pages 16 and 17 of LDAC Advice: Industry and NGO positions.

He encourages the EU vessels to report to the Commission if they encounter problems or incidents providing any necessary details.

ACTION: The LDAC will include on its advice comments to the oil and gas activities.

d) LDAC Participation as observer in NAFO Scientific Council

The Secretary introduced this item and asked the Commission if it would be possible for LDAC delegates (on their capacity as stakeholders' representatives) to participate in observer capacity in meetings of the NAFO Scientific Council during 2016. The EC representative replied that he was not aware of the presence of observers from stakeholders in such meetings. He said that there might be a possibility to attend as part of the EU delegation but he needs to check with his colleagues first.

8. NEAFC.

a. Updates on the consultations among coastal States.

There are no news to report on this topic.

b. Snow crab fishery

The Secretary informed that a revised proposal drafted by Mr. Hjálmar Vilhjálmsson (ELDFA) was circulated amongst WG2 members. The proposal contained smaller areas for closure to snow crab pot activity in the Barents Sea (NEAFC RA IA). The revised draft received some substantial objections on the coverage of the closure and the lack of dialogue with representatives of concerned fleets. In view of the lack of agreement on the content, the proposal was withdrawn and shelved. There was a request from some members to focus more on agreeing a communications protocol and promoting gear cohabitation between trawlers and potters rather than the setting up of seasonal closures. It was also suggested that, should there any future discussions on this topic arise, the Secretariat will invite the representatives of crab potters so they can have a say at the debate and explain their positions Vis à vis the shrimp trawlers.

9. AOB

Rob Banning (DPFTA) informed that the US National Wildlife Service has launched a public consultation asking that a fishing nation approves a programme for protecting the by catch of marine mammals. This measure would apply to everybody who exports fish products to the US market if they do not have such a

plan in place they could be banned for market access following a transition period of 5 years. Mr. Banning encouraged in particular LDAC members of the fishing sector to participate in this consultation, as many conservation agencies and NGO have already done it.

The European Commission should mention that the EU has a Regulation on this matter and ask to get recognition for that and be allowed to continue exporting products into the US.

ACTION: The EC representative will send to the Secretariat the link to the US Public consultation, which will subsequently be made available to all LDAC members³.

10. Date and place for the next meeting

The date and place for the next meeting of the Working Group remains pending, and it is suggested to include whenever possible attached to other Working Group meetings in March or April 2016.

The session is adjourned at 18:00 hours.

³ Link submitted “a posteriori” Implementation of Fish and Fish Product Import Provisions of the US Marine Mammal Protection Act:

<https://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2010-0098>

BRUELL

LDAC Working Group 2 Meeting
Brussels, 22 October 2015

ANNEX I. LIST OF PARTICIPANTS

LDAC Working Group 2 Brussels, 22 October 2015

MIEMBROS GRUPO DE TRABAJO

1. Iván López. AGARBA
2. Juan Manuel Liria. FEOPE/CEPESCA
3. Erik Bjørn Olsen. Living Sea
4. Hjálmar Vilhjalmsón. EL DFA
5. Emil Remisz. NAPO
6. Caroline Mangalo. CNP MEM
7. Björn Stockhausen. Seas at Risk
8. Rob Banning. Dutch Pelagic. FTA
9. Katarina Sipic. CONXEMAR
10. Barrie Deas. NFFO
11. Sandra Sanmartin. EBCD
12. Vanya Vulperhorst. OCEANA
13. Raúl García. WWF
14. Irene Vidal. EJV

OBSERVADORES

15. Manuel Carmona. EC (NAFO)
16. Maja Kirchner. EC (Deep sea)
17. Stamatis Varsamos. EC (LO)
18. Manuel Catalán. EC (EEA Agreements)
19. Carmen Paz. PE
20. Konstantinos Kalamantis. PE
21. Alexandre Rodriguez. LDAC
22. Marta de Lucas. LDAC
23. Evangelia Georgitsi. EC (AC Coordinator)
24. José Antonio Suárez-Llanos. ARVI
25. Daniel Voces. Europêche