

LDAC R-04-18/WG2

London/Madrid, 13 November 2018

Subject: Report on State of Play and Query on EU position on Snow Crab management and access to Svalbard Fishery Protection Zone.

Dear Director General of Maritime Affairs and Fisheries, Mr Machado

The purpose of this letter is to follow up the pending issue of access by EU fleet to Snow Crab fishing in Svalbard as requested at the position paper we submitted on 24 November 2016¹ and the reply received by your services on 12 December².

The LDAC held today in London its Working Group 2 meeting on North Atlantic Fisheries in London and we had an update by a representative of the EU Snow Crab fleet on the state of play of this file.

We were informed that in early November the Norwegian Supreme Court had a hearing in Oslo to rule on the “*Senator*” case referred to the arrest of the Latvian vessel on 16th January 2017 by the Norwegian Navy Coast Guard accused of being engaged in illegal catch of snow crab on the Norwegian shelf in the Svalbard FPZ despite holding a fishing licence issued by its Flag State as a result of the quota allocated by the EU Council at the Fisheries Council in December 2016³. Litigating parties were informed that the final ruling would be likely issued before the end of November 2018.

¹ LDAC Position Paper (Nov 2016): <http://ldac.ldac.eu/download-doc/125733>

² EC Reply (Dec 2016): <http://ldac.ldac.eu/download-doc/127096>

³ <https://thebarentsobserver.com/en/arctic/2017/01/snow-crabs-raises-conflict-potential-svalbard>

The EU snow crab representative reported that the Norwegian court decided to leave out of the ruling the question relating to the geographical scope of the Svalbard Treaty. The Norwegian Supreme Court will therefore provide a resolution on two questions:

1. Is snow crab a sedentary species?
2. Were the Latvian licenses valid to fish for snow crab in the Svalbard Fishery Protection Zone?

The EU snow crab industry representatives have manifested their confidence in the arguments submitted and the legal basis in terms of jurisprudence, precedents and factual evidence presented to the court. Particularly, concerning the definition of sedentary species under international law (UNCLOS and implementing decisions), which under their point of view should exclude crustaceans.

It must be also highlighted that the EU snow crab industry described a possible agreement on snow crab as mutually beneficial since they were landing their catches in Norwegian soil and factories, which is benefiting the local economy and creating employment.

The LDAC is fully aware that access to fish Snow Crab in Svalbard is a highly controversial and politicised question and that there are many underlying reasons and economic drivers beyond fishing ⁴. The Norwegian governmental authorities are closely monitoring this case and have made strong political declarations and public statements that have been collected by national media.

Some Norwegian journalists have also depicted the EU fleet activities in Svalbard in a negative manner and even presented them as “pillagers”. As an example, during the last weekend, the Norwegian newspaper “*Dagbladet*” started a media campaign against Latvian crabbers. This campaign was echoed in Latvian press.

⁴ <https://www.politico.eu/article/of-crustaceans-and-oil-the-case-of-the-snow-crab-on-svalbard/>

Both the Latvian government and industry are waiting for the Supreme Court decision on the “*Senator*” case before consider rising a legal action against Norway before the International Court of Justice for claiming their historical access and equal rights of fishing in a non discriminatory manner to the waters surrounding the Svalbard archipelago in accordance with Articles 2 and 3 of the Treaty of Paris from 1920⁵.

In the meantime, Latvia has initiated separate proceedings and raised a formal complaint before the European Court of Justice against the European Commission in grounds of failure to act to defend the interest of a MS⁶. The claim was filed in May 2018 and other Member States had 90 days to decide whether to join the claim. In September at least another country joined the process, which is still ongoing.

The EU snow crab industry have also questioned about the reasons that led to DG MARE Director in the time, Ms Lowri Evans, to issue a letter with date 5th August 2015 whereby it declared snow crab as a sedentary species.

The LDAC was also informed that EU Fisheries Commissioner Mr Karmenu Vella met recently the current Norwegian Fisheries Minister Mr Harald T. Nesvik, and that the snow crab issue was discussed amongst other topics. We would like to have a report on these discussions and also if the EU has an agreed calendar for future action. In this sense, we would like to remind that the snow crab fleet has been waiting for more than 2 years for a viable solution to this conflict.

As a last remark, the LDAC would like to reiterate its request that the negotiations between the EU and Norway to resolve the snow crab fishing in Svalbard should not be linked to the negotiations on renewal of the bilateral fisheries agreement.

⁵ http://library.arcticportal.org/1909/1/The_Svalbard_Treaty_9ssFy.pdf

⁶ <https://eng.lsm.lv/article/politics/diplomacy/latvia-to-take-european-commission-to-court-over-crab-ship-case.a276149/>

We trust you take this letter into due consideration and can provide us with a comprehensive update on what is the European Commission's position in relation to Snow Crab in Svalbard.

Yours faithfully,

Iván López
LDAC Chair

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