



NSAC Advice Ref.07-1617

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Scheveningen Presidency
Ministry of Economic Affairs
Bezuidenhoutseweg 73
The Hague, 2594 AC
The Netherlands

11th March, 2017

Matters arising from application of Articles 11 and 18 of the CFP

Dear members of the Scheveningen Group,

On 18th October 2016, the North Sea Advisory Council (NSAC) presented a paper to the Scheveningen Group in Stockholm entitled '*Reflections and recommendations on the consultation procedure by Member States regarding Article 11 of the CFP (Regulation (EU) No 1380/2013)*'.

The paper raised two main issues, the first of which was that the distinction between informal and formal consultation, and when this should trigger engagement with the AC, has not always been made clear by the initiating Member State (iMS), thereby compromising the NSAC's preparedness and opportunity to give formal advice. Our recommendations for rationalising this, and for ensuring consistency in approach across Member States, included the point (1.1) that '*Once the joint recommendation is near final, the NSAC should be formally consulted in a face-to-face meeting with the iMS, and final written feedback invited...*'.

Despite this input, which was well received, it is clear to us from a recent ad hoc meeting of the FISH-ENVI technical expert Scheveningen Group (London, January 17) that there are still differences in the approach of Member States to the above-mentioned, critical final step in the consultation with NSAC and that this is putting limits on our input as the key stakeholder group. The question arose in relation to the procedure for developing Joint Recommendations for the southern North Sea sites proposed by the UK (and has the potential to arise in relation to other



sites, in particular the Dogger Bank in which NSAC members have been actively engaged as stakeholders since 2011).

With agreement that, subject to some minor adjustments, there was sufficient information (*sensu* Article 11) on these UK southern North Sea sites, triggering the start of the 6-month formal negotiation (see Defra's circulated letter of 22 Feb, 2017), the NSAC representatives at the meeting asked whether the NSAC would be given the opportunity – as we hoped to have – to comment on the JRs during this negotiation period before their final submission to the Commission. From the meeting (and our notes), we understood that the UK considered that the JRs should be sent to the NSAC 'in parallel' with their submission to the Commission, thereby being provided for information only and allowing no opportunity for a final NSAC opinion.

The official record of the ad hoc meeting (circulated by Defra on 1 Feb, 2017) described this exchange thus: *'There was some discussion around whether it was necessary to seek clearance from the NSAC prior to sending the Joint Recommendations to the Commission for adoption. As this is not a legal requirement, it was agreed that the NSAC should be sent the agreed Joint Recommendations in parallel with them being sent to the Commission for adoption, for information, as the NSAC would have provided input into the development of the proposals through the consultation and negotiation of the proposals.'* The final Action Point is consistent with this interpretation, namely: *'Once bilaterals have been completed, the UK is to inform all Member States with a direct management interest and the NSAC of any changes that have been made to the proposals as a result of those discussions'*.

At the ad hoc meeting, Germany and Denmark agreed with the UK on this procedure, being of the view that only Member States with a direct management interest needed to come to an agreement and that no further input from the NSAC need be invited.

However, the Netherlands took a different view, stating (we quote from the verbatim notes of a NSAC representative present) that *'NSAC should be able to give its opinion on the final JR. Once Member States have agreed a JR, it should be sent in its final form to the NSAC for any final view – this does justice to due process'*.

The NSAC acknowledges that neither Article 11 nor Article 18 give clarity on how the Scheveningen Group should engage with the NSAC (the issue which gave rise to the anomalies we highlighted in the paper we presented to the Scheveningen Group last October). Article 18(3) merely states that, in cooperating with one another in formulating joint recommendations, Member States having a direct management interest *'shall consult the relevant Advisory Councils'*.

It is clear that the obligation is generally to *consult* the ACs, rather than (in the language quoted above) getting final 'clearance' or 'agreement' from the AC on JRs. The NSAC further acknowledges that the lack of prescription in the Basic Regulation does not legally oblige the Scheveningen Group to enable the NSAC to have sight of, and to comment on as appropriate, any JR during the *formal* negotiation period, as long as consultation has taken place at some stage of the process (though it should be noted, as above, the Basic Regulation does not



differentiate between a formal and informal process). However, to confer this opportunity would in our view – and in the words of the Netherlands – do justice to due process.

We would therefore urge the Scheveningen Group to revisit this issue to see if it could align itself with the view of the Netherlands on this matter. We would particularly ask this in respect of the JR for the Dogger Bank in which the NSAC has invested so heavily and in good faith to seek a consensual resolution of the management measures.

Finally, we would like to raise a separate but not unrelated point: In regard to the discussion on the Dogger Bank at the ad hoc meeting on 17 January, it was agreed that Denmark would host a meeting of the FISH-ENVI technical expert group to 'discuss lessons learned' from the Dogger Bank process but that the NSAC would not be invited to participate. As noted above, the NSAC has undertaken significant evaluation, including during its collaboration with MASPNOSE, of the Dogger Bank process in the interests of improving the determination of fisheries management measures for MPAs.

We appreciate that the NSAC will not be party to every Scheveningen Group meeting but we consider that in this particular instance our attendance would be helpful and informative, especially given that the same NSAC representatives have been engaged in the Dogger Bank process since the very outset, giving them valuable overall perspective. As such, the NSAC would greatly appreciate the opportunity to participate in the proposed 'lessons learned' meeting.

Yours sincerely,



Niels Wichmann
Chairman, NSAC

