

Draft Memorandum of Understanding – Advisory Council work with Member States

Introduction

The most recent reform of the Common Fisheries Policy prioritises regional decision-making, bolstering the roles of Advisory Councils, and setting out new processes for groups of Member States to collaborate on fisheries management for their region. Timely consultation, transparency, and constructive engagement between Advisory Councils and Member States are all crucial to help produce credible measures and effective management. This is particularly important for the development of urgent and contentious proposals, as has been apparent during the discussion of draft “discard plans” during 2014. This MoU aims to set out the principles of such collaborative engagement for future work under the CFP.

CFP Requirements

Stakeholder involvement is enshrined as a principle of good governance under the CFP framework generally, and is specifically built in to the regionalisation mechanisms and other provisions (see Annex for a summary of those provisions).

The CFP specifically strengthens the role of Advisory Councils, making it an obligation for Member States and the Commission to consult Advisory Councils under certain circumstances, and elaborating on the process to be followed for this consultation – expressly requiring, in Article 44 for example, that their advice must be taken into account.

The obligation of ‘taking advice into account’ does not entail the assumption that the recommendations proposed by an Advisory Council must be followed and implemented, but that they must be properly considered, in a timely manner, not ignored, and rejected only when there are reasons for doing so, and with a clear justification to the Advisory Council (Article 44).

Proposed Advisory Council/Member States Memorandum of Understanding

Legal Basis

1. Having regard to:

- Article 11 of the Treaty on European Union;
- the general objectives of the Common Fisheries Policy set out in Recitals 24 and 65, and Article 3 of Regulation (EU) No 1380/2013 (hereafter “the CFP Regulation”);
- the specific requirements for consultation with Advisory Councils (ACs) set out in Articles 6, 12, 13, 18, 20 and 44 of the CFP Regulation;

the [xxx] Advisory Council considers it important to set out the practical steps necessary to ensure effective collaboration with the Commission, Member States, and groups of Member States working together pursuant to Article 18 of the CFP Regulation.

Scope

2. These practical arrangements cover the steps necessary to achieve the consultation required under the Common Fisheries Policy, respecting the institutional roles set out in EU Treaties and other legislation, the advisory responsibilities of ACs, and the requirement for consultation in the specific circumstances set out in the CFP Regulation.
3. The arrangements cover all fisheries in the geographical area covered by the [xxx] Advisory Council.

4. The arrangements cover all Member States with a direct management interest in fisheries in this geographical area as defined in the CFP Regulation.
5. The arrangements cover all groups of Member States pursuing joint recommendations on management under article 18 of the CFP Regulation, or common Member State measures under Article 19 of the CFP Regulation, for fisheries in this geographical area.

Consultation Process

6. Every effort should be made to allow the AC to work closely with Member State and/or Commission experts to develop proposals/measures in collaboration, through a joint iterative process rather than through two parallel but isolated processes. The proceedings of each party should be open and transparent, with sharing of agendas ahead of meetings, and of notes afterwards.
7. Where there is a requirement to consult the AC (see specific CFP Regulation provisions as referred to in Annex), the Commission, Member State, or group of Member States will send a request to the secretariat of the AC, setting out clearly the issue for which advice is sought, the management instrument that is being proposed (if any), and the timeline for decision-making.
8. Every effort should be made to share data, other information and draft proposals at a sufficiently early stage to help both parties work effectively together.
9. The request for advice should be sent in sufficient time to allow the AC to consult their members, develop and submit advice before decisions are made.
10. All parties (the AC, Commission, Member States and groups of Member States) will endeavor to clarify the highest priorities, particularly when advice is urgent or constrained by rigid deadlines. For the avoidance of doubt, this means it is incumbent on all parties to actively assist in identifying the most important/urgent issues on which advice is needed.
11. The AC encourages Member States and the Commission to attend AC meetings, to foster greater mutual understanding of each other's work, priorities and timelines.
12. Representatives of the AC will be invited to attend at least the most appropriate part of all meetings of the Member State groups referred to in paragraph 5, including High Level Group (HLG) meetings and technical or *ad hoc* meetings, to contribute directly to discussions on matters on which the AC is being consulted. The presumption should be that AC representatives from both the "60%/fishermen" and "40%/other interest groups", [*and including both the Chair and Vice-Chairs or their designees*] are involved in those meetings as much as is possible, even if not present for the whole meeting.
13. AC representatives should at least have the status as observers in HLG meetings. In technical or other *ad hoc* meetings, AC representatives shall have the status of invited experts.
14. In all cases, including those where the AC submits a recommendation, suggestion or information on its own initiative, the recipient will respond to the AC secretariat within the deadlines in the CFP Regulation. This will be a substantive response, dealing with points raised, setting out how they have been taken into account, and including the reasoning for any divergence in views, as prescribed in Article 44.
15. In addition to specific proposals for consultation, the AC, Commission, Member States and Member State groups will share information on work planning as early as possible, to help each other prioritise and schedule workloads.

Key CFP provisions - Regulation (EU) No 1380/2013

The role and importance of Advisory Councils is introduced in the CFP's **Recitals**, number **65** of which acknowledges that *"Dialogue with stakeholders has proven to be essential for achieving the objectives of the CFP. [...] Advisory Councils should enable the CFP to benefit from the knowledge and experience of all stakeholders."* Also to be noted is **Recital 24**, which is concerned with multiannual plans, and states that these *"should be adopted in consultation with Advisory Councils"*.

Article 3 of the CFP sets out a number of general principles of good governance by which the policy shall be guided. Amongst these, is *"the appropriate involvement of stakeholders, in particular Advisory Councils, at all stages – from conception to implementation of the measures."*

The consultation of Advisory Councils is then specifically dealt with in a number of Articles, in particular **Articles 6, 12, 13, 18, 20 and 44**:

Article 6(2) sets out general provisions on conservation measures, establishing that as a general rule, advice received from Advisory Councils shall be taken into account in the adoption of these, as follows:

Articles 12 and 13 impose a consultation duty in connection with the adoption of urgent or emergency measures in cases where serious threats are identified to either marine biological resources or the marine ecosystem. Under these Articles, procedures are established for the adoption of temporary measures by the Commission, or by the Member States themselves (within their sovereign waters) in such cases.

Article 18 is where the new CFP's regionalised governance procedures are introduced. Firstly, Article 18(1) establishes that Member States may *"agree to submit joint recommendations for achieving the objectives of the relevant Union conservation measures, the multiannual plans or the specific discard plans"*. Under Article 18(2) Member States are obliged to consult Advisory Councils as part of this process:

"For the purpose of paragraph 1, Member States having a direct management interest affected by the measures referred to in paragraph 1 shall cooperate with one another in formulating joint recommendations. They shall also consult the relevant Advisory Councils. [...]"

In **Article 20**, Member States are permitted to take non-discriminatory measures within their 12 nautical mile zones for the purposes of conserving and managing fish stocks, and maintaining or improving the conservation status of marine ecosystems. Once again, where such measures are liable to affect the vessels of other Member States, they may be adopted: *"only after consulting [...] the relevant Advisory Councils"*

Article 44 sets out in more detail the process by which Advisory Councils are consulted, either by the Commission or Member States.

Whenever Advisory Councils are consulted – be it on joint recommendations, or in respect of other measures - their advice is legally required to be taken into account. This is clear from the wording of **Article 44(3)**. **Article 44(4)** sets out certain further requirements in respect of the process that must be followed when conducting a consultation: a reply to the information received must be given within 2 months, and, if the final measures adopted are not the same as the Advisory Council has proposed, detailed reasons for the divergence must be provided.