

MARINE STEWARDSHIP COUNCIL

INDEPENDENT ADJUDICATION

IN THE MATTER OF

MURMANSELD 2 BARENTS SEA COD AND HADDOCK

**FINAL DECISION OF THE
INDEPENDENT ADJUDICATOR**

Introduction

1. On 15 October 2019 the Marine Stewardship Council (hereafter “MSC”) received a Notice of Objection from WWF Germany and WWF Russia to the report and determination of NDV GL Business Assurance, the Conformity Assessment Body (hereafter the “CAB”) to certify the ‘Murmanseld 2 Barents Sea Cod and Haddock Fishery’ (hereafter shortened to “Murmanseld” or “the Fishery” for convenience). WWF objects to the proposed certification. The CAB report is dated 23 September 2019.
2. On Friday 13 December 2019, an oral hearing took place to determine the merits of the Objection. On 20 January 2020 I provided the parties with my post hearing decision in which I concluded that pursuant to FCR PD 2.7.2 and PD 2.7.3 (d) the CAB’s determination was to be remanded to consider the scores at: P1 2.4.1 (b); 2.4.2 (a) and 2.4.2 (d).
3. On 28 January 2020 the CAB produced a formal response to the Remand decision and an amended draft Certification Report. Helpfully the amended report set out in red track changes the proposed amendments. On 7 February 2020 the CAB circulated a further iteration with the red track change amendments including the new proposed Client Action Plan.

4. I will set out the overall approach the CAB adopted. In respect of PI 2.4.1 (b) it submitted:

“On this basis, we propose:

1. a) To follow the IA direction and include the ‘vulnerable biotope’ areas identified by MAREANO as potential VMEs.
2. b) To include MAREANO habitat maps showing these ‘vulnerable biotopes’ in the Final Report.

These would necessarily be the maps on the MAREANO website at the time of the oral hearing (these being the maps now available to us).

3. c) To reduce the score for PI 2.4.1 SI b to 60 on the basis that it cannot be stated that it is ‘highly unlikely that the UoA would reduce structure and function of the vulnerable biotopes identified by MAREANO to a point where there would be serious or irreversible harm’.
4. d) The overall score for PI 2.4.1 would then reduce to 70
5. e) A condition would be put in place requiring that Murmanseld 2 demonstrate that their operations are highly unlikely to reduce structure and function of the areas of potential vulnerable biotopes identified by MAREANO to a point where there would be serious or irreversible harm. Should serious or irreversible harm be identified, this would be addressed under PI 2.4.2 SI a or d.”

5. The milestones in the Client Action Plan require:

Year 1. Prepare a plan to determine the extent of fishing by Murmanseld 2 vessels in the locations of the vulnerable biotopes identified by MAREANO.

Year 2. Analyse the extent of interactions between Murmanseld 2 vessels and these vulnerable biotopes.

Year 3. Provide evidence that the UoA is highly unlikely to reduce structure and function of the vulnerable biotopes to a point where there would be serious or irreversible harm.

6. In respect of PI 2.4.2 (a) it was submitted:

For this remand we propose:

- a) To identify the MAREANO ‘vulnerable biotopes’ as potential VMEs as described

above and include this in the scoring rationale for this SI.

b) To expand the text to include consideration of whether the inclusion of these ‘potential VMEs’ would affect the current scoring of PI 2.4.2 SI (a) through application of SA3.14.2.2. Given that the requirements of SA3.14.2.2 are met through the existing management system requirements, notably the existing move-on rules, we do not anticipate a change in scoring. This would be consistent with scoring of the AGARBA fishery which refers to Norwegian management requirements and also UoA-specific measures. These UoA-specific measures are considered under PI 2.4.2 SI (d) below.

7. I will not detail the proposed amendments for PI 2.4.2 (d) as these were agreed at the Objection hearing.
8. On 12 February 2020 WWF filed a response disagreeing with the proposed changes to the Report and the terms of the client action plan. WWF concerns are as follows:

“The new condition 2 regarding 2.4.1 can be summarized as:

the UoA should analyze the extent of interactions between fishing activities and VMEs and show with this report that damage on VMEs is highly unlikely.

Summary of condition 3: Provide quantitative evidence that Murmanseld 2 vessels comply with relevant protection measures afforded to VMEs by other MSC UoAs

But what will happen if the condition 2 report shows that damage is not unlikely ? Then the UoA would loose its certification because further steps (to minimize impacts) are not scheduled (?)

It can not be argued that the new condition 3 (harmonizing with relevant protection measures afforded to VMEs by other UoAs) will automatically lead to score 80 in 2.4.1 for Murmanseld 2. The Estonia and especially the AGARBA assessments (and conditions) are only referring to **OSPAR VMEs**, however the Murmanseld 2 condition is related to **MAREANO VMEs** that exist in a much larger area.

From our perspective it is prerequisite that condition 2 (2.4.1) includes a way forward in case that the overlap analysis shows that serious impacts on VMEs are not highly

unlikely (similar to the Estonia condition). We do not think that it is in line with MSC requirements that an overlap study alone can fulfill a condition for 2.4.1.”

9. WWF also submitted that the CAB should have followed the approach of condition setting in the Estonia Cod Fishery and they referred me to those conditions.

10. On 18 February 2020, the CAB briefly responded to WWF’s concerns. Dr Hough submitted:

“The situation would be as follows:

Condition 2, PI 2.4.1. This relates to an estimation of impacts. If there are shown to be impacts, then a management response would be required.

Condition 3, PI 2.4.2. This requires protection measures, which may well address any impacts (we expect that they would suffice)

If planned actions relating to condition 3 are not sufficient, then PI 2.4.2 (and potentially 2.4.1) may be rescored at surveillance audits and additional measures required – this is one of the functions of the surveillance audits

Regarding the point of MAREANO vs OSPAR identified potential VMEs, this is the reason we included the words ‘Consultation may include determination of the best approach given developing science’. It seems that the actions by AGARBA are not now considered sufficient by WWF. We have made the point with Murmanseld 2 (and they fully recognise) that the MAREANO areas are new best science (you will remember that Murmanseld 2 have already analysed fishing areas vs MAREANO areas). This will probably need some response by AGARBA but this should be clear in discussions between the companies.”

11. My role is set out in the FCR:

PD2.8.4 The independent adjudicator shall, within 10 days of the response by the CAB, either:

PD2.8.4.1 Accept the response as adequately addressing the findings raised in the remand and confirm the original or amended Final Report and Determination by the CAB.

PD2.8.4.2 After reviewing the response of the CAB, determine that the objection shall be upheld on one or more of the grounds specified in PD2.7.2.

12. I have carefully considered the parties' rival submissions but I conclude that the amended Final Report and Determination are appropriate and dismiss WWF's further objections to the amended Report. My brief reasons are set out here:

- a. the amended Report and conditions do impliedly deal with the situation where the fishery consider there is a damage to VMEs;
- b. if there is damage then the management strategy may deal with it and I consider the milestones set out above in effect create a time and space to consider whether or not there is or is not damage in the context of the expanded definition of VME;
- c. the fishery will be subject to surveillance audits and the issue of damage in respect of the expanded VME category/areas will need to be considered. That is an issue, however, for the surveillance audit. If additional measures are required they may be imposed then;
- d. each of these steps is within the area of the CAB's deployment of its expert judgement and it is important I should respect that and not trespass on areas of fishery expertise.

13. In line with the FCR, the CAB shall now finalise and issue the Report with its amendments, scoring and conditions as set out in the draft prepared in response to the remand decision.

14. I thank all parties for their assistance.

John McKendrick QC
Independent Adjudicator
27 February 2020