



**Council**

**CNL(20)07**

***The Future Status of the UK Within NASCO***



## *The Future Status of the UK Within NASCO*

### **Purpose**

The purpose of this paper is to provide information about decisions that need to be taken by Council because the United Kingdom (UK) has left the European Union (EU). The paper provides information on the past, current and potential future status of the UK within NASCO. Rules on accession to the NASCO Convention are set out and information about the UK and EU's position on this topic is provided.

### **Decisions**

This is subject to change, as circumstances change, but it is likely that the following decisions will be required:

1. Agree that the Convention be open to accession by the UK, to enable the UK to accede to the Convention;
2. Agree that the UK may become a member of the North-East Atlantic and the West Greenland Commissions should this be requested;
3. Discuss what role, if any, the UK might have in the North American Commission;

Additionally, in order to ensure the smooth running of NASCO it would be helpful to:

4. Agree which of the NASCO bodies should have a UK representative; and
5. Request that, as soon as possible (and during the Implementation Period), the UK informs the Secretariat who will represent it on the various NASCO bodies from January 2021.

### **Background**

The UK left the European Union on 31 January 2020. The UK is now in an 'Implementation Period' (sometimes called a Transition Period) until 31 December 2020. During this time EU law continues to apply to the UK under the terms set out in the [Withdrawal Agreement](#).

Until 31 January 2020, the [Convention for the Conservation of Salmon in the North Atlantic Ocean](#) (the Convention) applied to the UK by virtue of its membership of the EU. As detailed below, under the Withdrawal Agreement between the UK and the EU, this will continue during the Implementation Period.

Prior to the Covid-19 pandemic the UK passed the [European Union \(Withdrawal Agreement\) Act 2020](#) which prevents an extension of the Implementation Period.

In order to ensure that the Convention continues to apply to the UK at the end of the Implementation Period (i.e. after 31 December 2020) the UK will need to accede to the Convention as a Contracting Party in its own right.

Essential information is provided below. Additional information is provided in the Annex 1.

### **NASCO Articles and Rules relating to Accession to the Convention**

Article 17 of the [Convention](#) relates to accession. The Secretary's understanding of the Convention in this case is:

- the Convention shall be open for accession by the UK, subject to the Council's approval;

- if the Council decides that the Convention is open for accession by the UK, the UK may deposit its instruments of accession with the Depositary (the European Union); and
- the UK will accede to the Convention on the date of deposit of its instruments of accession.

NASCO's 'Rules of Procedure for the Council' specify how decisions of the Council are to be taken. Relevant rules are:

- Rule 5. No vote shall be taken unless two thirds of the members of the Council are present;
- Rule 6.1. Decisions of the Council ... shall be taken by a three-quarters majority of the votes of the members present and casting an affirmative or negative vote; and
- Rule 9. Between meetings of the Council and in case of special necessity to be determined by the President, votes may be taken by mail or by other means of textual communication. Such votes shall be considered as roll call votes. The Secretary shall immediately notify the members of the Council of the results of such votes.

### **Accession to the Convention**

If the Council agrees that the Convention is open to accession by the UK, as soon as the UK has deposited its instruments of accession with the Depositary (the European Union), the Depositary will inform the signatories and acceding Party of this fact and notify them of the date of the accession to the Convention.

Article 17(6) of the Convention states:

*'For each Party ratifying, approving or acceding to this Convention after the deposit of the requisite instruments of ratification, approval or accession under paragraph 5, it shall enter into force on the date of entry into force of the Convention or on the date of deposit of the instrument of ratification, approval or accession, whichever is the later.'*

### **Membership of NASCO Commissions**

If the UK becomes a Contracting Party to NASCO in its own right, Article 10(3) of the NASCO Convention applies:

*'A Party not mentioned in paragraph 1(b)\* may, at its request and upon the unanimous decision of the Council, become a member of the West Greenland Commission or the North-East Atlantic Commission if it is a State of origin for significant quantities of salmon occurring in the respective Commission area or if it exercises fisheries jurisdiction in that area.'*

\*Canada, the European Economic Community and the United States of America.

The UK would, therefore, have to request membership of the North-East Atlantic and the West Greenland Commissions after it has deposited its instruments of accession. This would require a further separate vote by Council.

Currently, the EU has a role in the North American Commission. Rule 5 of the Rules of Procedure for the North American Commission states:

*'The European Economic Community shall have the right to submit and vote on proposals for regulatory measures concerning salmon stocks originating in the territories referred to in Article 18 of the Convention and shall, for the purposes of these Rules, be deemed a member of the Commission insofar as the consideration of such proposals is concerned.'*

The UK may also wish to have such a role in the North American Commission.

### **The UK wishes to Accede to the Convention**

Whilst NASCO has had no formal correspondence with the UK Government since February 2019 (see below), the Secretariat has had informal discussions with UK Government officials. Officials indicate that the UK wishes to accede to the Convention.

More formally, on 28 February 2019, the President of NASCO received a letter from Michael Gove (then, the Secretary of State for Environment, Food and Rural Affairs in the previous UK Government) with an accompanying ‘Note Verbale’. The letter states:

*‘The Note Verbale formally requests the approval of the NASCO Council in respect of the United Kingdom’s accession to the NASCO Convention in accordance with Article 17(3) of that Convention.’*

Although the letter was submitted ‘only as a contingency ... in a scenario where the United Kingdom withdraws from the European Union without a withdrawal agreement’ it demonstrates the UK’s wish to accede to the Convention.

In its letter to the NASCO President, the previous UK Government also stated that:

*‘...in the event that the Withdrawal Agreement is signed, ratified and approved by the United Kingdom and the European Union and enters into force, the United Kingdom will refrain from depositing its instrument of accession to bring about membership of NASCO in its own right with effect from the point of its withdrawal from the European Union. In that case, for the duration of the transition period pursuant to the Withdrawal Agreement as stated above, the United Kingdom will be treated as a Member State of the European Union and the NASCO Convention will continue to have effect accordingly.’*

If the approach set out in these letters continues to be the policy of the new UK Government, the UK will not deposit the articles of accession required to become a Contracting Party in its own right, until a suitable time during the Implementation Period and in accordance with the UK – EU Withdrawal Agreement.

The previous UK Government also [indicated](#) that it would like to become a member of both the North East Atlantic Commission and the West Greenland Commission as soon as possible after acceding to the Convention, although this was not part of the official request.

### **The European Union’s Position**

Currently, the Convention continues to apply to the UK via the Withdrawal Agreement between the EU and UK. Therefore, the EU’s position on accession is particularly relevant. On 10 April 2019 the European Commission [published a proposal](#) for a decision of the Council of the European Union, on the position to be taken on behalf of the EU in the framework of the Convention for the Conservation of Salmon in the North Atlantic Ocean as regards the application for accession to that Convention submitted by the UK.

The [position was adopted](#) by the Council of the EU, and entered into force on 27 May 2019. It states that the position ‘shall be to approve the application for accession of the United Kingdom to that Convention provided that this approval is given as from the moment Union law ceases to apply to the United Kingdom.’ i.e. from 31 December 2020.

More information on the EU’s position is provided in Annex 1.

## **The UK – EU Withdrawal Agreement**

As set out above, the UK – EU Withdrawal Agreement effectively means the UK will continue to operate as if it were an EU Member State, until 31 December 2020, but without participating in the EU's decision-making processes.

The previous UK Government published an [Explanatory Memorandum](#) on its approach in relation to the NASCO Convention in February 2019, which states:

*'In accordance with arrangements under the Withdrawal Agreement, during the Implementation Period, the UK is to be treated as a Member State for the purposes of international agreements concluded by the EU. Pursuant to these, the UK would continue to be covered by the NASCO Convention during the Implementation Period.'*

The Withdrawal Agreement sets out rules according to which the UK may participate in RFMOs in Article 130(3). In summary, this says:

- that the EU may invite the UK to attend, as part of the EU's delegation, meetings or parts of meetings of such bodies, where the EU considers that the presence of the UK is necessary and in the interest of the EU, in particular for the effective implementation of those agreements during the transition period (Article 129(2)(b)); and
- with a view to allowing the UK to prepare its future membership in relevant international fora, the Union may invite the UK to attend, as part of the EUs delegation, international consultations and negotiations.

The Secretary understands this to mean that the UK can participate in NASCO Meetings, Committees etc. during the Implementation Period (Transition Period) as long as they are invited to do so by the EU.

### **NASCO Bodies**

As you are aware, NASCO's work is often undertaken by bodies made up of representatives nominated by each Party. It is unclear to the Secretariat whether, or at what point, the UK would be asked to nominate representatives for NASCO bodies such as:

- the International Atlantic Salmon Research Board and its Scientific Advisory Group;
- Special Session Steering Committees;
- the Framework of Indicators Working Group for West Greenland;
- the Framework of Indicators Working Group for the North-East Atlantic;
- the *G. salaris* Working Group; and
- the Third Performance Review Working Group (if established).

The Membership of the IP /APR Group is different. The Guidelines [CNL18\(49\)](#) states that it will comprise:

- one representative of Denmark (in respect of the Faroe Islands and Greenland);
- three representatives of **the other Parties** (preferably one from North America and two from Europe);
- two representatives of the NGOs (preferably one from Europe and one from North America); and
- one scientific representative from the Standing Scientific Committee.

It is, therefore, unclear whether the membership of ‘the other Parties’ would be expanded, should the UK accede to the Convention.

To allow for planning for the work of these bodies, it would be helpful to have UK representatives nominated in advance of the UK’s accession to the Convention (should that take place) in January 2021.

Secretariat  
Edinburgh  
1 April 2020

## ***Additional Background Information***

### **Brexit and Regional Fisheries Management Organisations**

In its [Guidance on Fisheries](#) document, the previous UK Government Department for Exiting the European Union stated:

*‘Through the UK’s membership of the EU, we are party to a number of multilateral fisheries agreements, such as Regional Fisheries Management Organisations (RFMOs). The UK will accede to a number of these agreements by depositing articles of ratification immediately following exit. This will ensure there is no gap in application of the agreement. The UK intends to accede to the following agreements in this manner...*

- *Convention for the Conservation of Salmon in the North Atlantic Ocean (NASCO)...*  
*For two RFMOs, NEAFC and NASCO, the assent of existing parties is required. The UK is engaging with the relevant parties in support of UK accession.’*

The [document](#) also stated with respect to NASCO that:

*‘The UK application to join is being considered by the contracting parties. A delayed response may result in a short membership gap. We will mitigate the impact by engagement with the regulators and industry.’*

### **UK Ratification of the Convention**

The previous UK Government presented documents to the UK Parliament in February 2019 as part of the ratification of the NASCO Convention in the UK. These are [available](#) and include an [Explanatory Memorandum](#). A report on the scrutiny of ratification of the Convention was [published](#) on 26 February 2019.

### **Details of the European Union’s Position**

The [position was adopted](#) by the Council of the European Union, and entered into force on 27 May 2019. The position recognises responsibilities under Article 66 of (United Nations Convention on the Law of the Seas (UNCLOS) relating to anadromous stocks. It states that:

*‘(10) In order to prevent unsustainable fisheries, it is in the interest of the Union that the United Kingdom cooperates in the management of the salmon stocks in full compliance with the provisions of the UNCLOS and the United Nations Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks of 4 August 1995 (UNFSA) (6) or any other international agreement or norm of international law.*

*(11) As provided in Article 66 of the UNCLOS, the State of origin of anadromous stocks and other States fishing those stocks must make arrangements for the implementation of that Article. Such cooperation may be established in the framework of regional fisheries management organisations.*

*(12) The accession of the United Kingdom to the NASCO Convention will allow the United Kingdom to cooperate on the necessary conservation and management measures with due regard to the rights, interests and duties of other countries and the*



*Union, and to ensure that fishing activities are carried out in a way that results in the sustainable exploitation of the salmon stocks concerned.*

*(13) It is therefore in the interest of the Union to approve the application for accession to the NASCO Convention submitted by the United Kingdom as from the moment Union law ceases to apply to the United Kingdom.'*