

ANNEX

Informal observations on the Operational Programme for the Development of Fisheries for 2014-2020 of the Netherlands

CCI2014NL14MFOP001

The following informal observations are made in line with Article 29(3) of the Common Provisions Regulation (CPR) and are presented following the template structure of the EMFF operational programme (EMFF OP). The observations address issues based on the EMFF OP informally submitted to the European Commission by the Netherlands on 22 October 2014.

The Netherlands is asked to provide to the Commission any necessary additional information and, where appropriate, revise the EMFF OP and submit the revised version via SFC2014.

GENERAL OBSERVATIONS

1. The Commission appreciates that the Netherlands proposes a focused and well-defined strategy for the EMFF OP which closely follows the objectives laid down in the Europe 2020 Strategy, addresses the general reform of the Common Fisheries Policy (CFP), including the landing obligation, and the Integrated Maritime Policy (IMP) and fully supports the priorities defined in the Regulation (EU) No 508/2014 (EMFF Regulation).
2. The Commission requests that the Netherlands review the contribution of the EMFF OP to climate change objectives in line with whereas 14 of the CPR.
3. The Commission requests that the Netherlands thoroughly explain, based on an analysis of the needs, why CLLD will not be financed by EMFF.
4. The Commission requests that all references to support for fishing techniques that could be seen as controversial are deleted and replaced by more general descriptions that allow for supporting the development of sustainable innovative fishing techniques.
5. The Commission requests that the financial tables are adjusted to meet the requirements regarding the performance framework, technical assistance threshold and the ring fenced amounts.
6. The Commission requests that the serious deficiencies detected in the EMFF management and control system are addressed appropriately to avoid these shortcomings in the implementation of the EMFF OP. How this will be done should be described in the summary of the management and control system.
7. The Commission acknowledges that according to the Netherlands' self-assessment, all four EMFF specific ex-ante conditionalities are fulfilled. However, for the Commission

to be able to confirm the self-assessment of the Netherlands, it is required that the OP includes an assessment at the required level of detail covering all criteria for fulfilment.

8. According to Article 8(2) of the EMFF Regulation, the rules on State aid do not apply “to payments made by Member States pursuant to, and in conformity with, this Regulation falling within the scope of Article 42 TFEU”. Therefore, certain operations eligible for support from the EMFF do fall under the scope of State aid rules. The Commission services draw the attention of the Netherlands to the fact that the Decision approving the EMFF OP will be without prejudice to the Commission's position regarding compliance of any operation supported under the programme outside the scope of Article 8(2) of the EMFF Regulation with the applicable procedural and substantive State aid rules at the time when the support is granted.
9. The granting of State aid falling within the scope of Article 107(1) TFEU, granted either under aid schemes or in individual cases, requires prior approval by the Commission under Article 108(3) TFEU except where the aid is exempted under an exemption regulation adopted by the Commission under Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 to certain categories of horizontal aid and its amendments or under Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State Aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest and its amendments or where such aid is granted in line with the conditions of the applicable regulations on de minimis aid.

More details on the above elements and other observations, some of a more technical nature, are provided in the sections below.

SECTION 2 SWOT ANALYSIS AND IDENTIFICATION OF NEEDS

10. Please strengthen the climate change aspects of the SWOT. Specific attention could be given to how energy savings and how much overall saving can be achieved; which new technologies should be promoted to save resources (energy and water); which types of certification should be promoted to achieve shorter product chains.
11. The market dimension is well integrated in the operational programme and attention has been paid to the new opportunities offered by the EMFF and CMO regulation. Of particular relevance is the intention to explore the marketability for by-catches outside human consumption. The analysis also refers to the possibility to create new markets, a possibility that could benefit from a more detailed description of the available opportunities like geographical markets or new species.
12. In the identification of needs for section VI. Integrated maritime policy, please add "minimise the effects of underwater noise and energy-related activities.

13. Please include a reference to the MSP Directive 2014/89/EU, and how it can contribute to addressing the challenges listed in the SWOT such as identifying sites for aquaculture, the increasing pressure of uses on the North Sea and coordinating cross-border activities. The MSP Directive and any national MSP which it integrates, will by 2021 contribute to sustainability by organising how different parts of the sea are used by different stakeholders and sectors.

SECTION 3 DESCRIPTION OF THE STRATEGY

14. Under Union Priority 1, objective 1(a), it is stated that sustainable innovations in inland fishing will be supported, yet no details are provided in this section on what these innovations might involve. The SWOT analysis for sustainable fisheries development acknowledges that inland fishing has too great a dependence on eels, whereas this stock is in poor condition. Netherlands should provide a better rationale for measures chosen to improve eel management. While the measures like fishing restrictions and restocking are expected to be beneficial (the evidence for net benefits of the latter is still lacking), the OP fails to provide a long-term approach to this problem. Restocking and transfer of eel over the migration barriers is a temporary solution. Permanent solutions like mitigating migration barriers (e.g. fish passes) and improvement of environment are essential for tackling this challenge effectively and efficiently.
15. Under Union Priority 1, objective 1(a), there is a strong focus on more selective fishing gear and alternative fishing methods. The opportunities associated with these measures as set out in the SWOT analysis focus mainly on increasing fishing opportunities, including in protected areas. Please provide an analysis of all the environmental impacts of these measures in terms of their potential to reduce pressures on vulnerable fish stocks and avoid any ancillary harm to the marine environment. Also, the Commission requests that all references to additional support for fishing techniques that are currently at an exploratory/pilot stage (e.g. pulse fishing) are deleted; in view of the fact that such techniques are already being tested extensively, that research is underway and has been done already, and that the consultation of the competent Advisory Council has not yet been completed, it would seem appropriate to evaluate the results of that testing scientific study and consultation before committing to further financial support. The relevant text should therefore be replaced by a more general description that maintains the possibility of supporting the development of sustainable innovative fishing techniques.
16. In general the multiannual national plan for aquaculture and the measures foreseen under Union Priority 2 in the OP are consistent. Additional opportunities offered by the EMFF such as Art. 51 (Increasing the potential of aquaculture sites) and Art. 53 (Conversion to eco-management and audit schemes and organic aquaculture) could be considered to address some of the objectives described in the multiannual plan, such as the search for new production areas and optimisation of existing areas for shellfish

farming, and the need for certification to demonstrate the environmental performance of farmed species such as turbot.

17. Regarding market-related aspects, the operational programme envisages three main actions, i.e. support to production and marketing plans (PMPs), storage aid and measure to promote cooperation within the supply chain. With regard to storage aid, it should be reminded that this is not available to aquaculture POs. As regards financial support to production and marketing plans, please clarify the extent to which the content of the PMPs, which according to the CMO regulation have already been submitted by POs and approved by the Netherlands, is consistent with the proposed strategy.
18. The operational programme places significant emphasis on innovation in the sector and better marketing of fisheries products. A number of the actions considered for achieving such objectives could be achieved through the Producer Organisations' production and marketing plans, (e.g. certification, joint initiatives and innovation). Please clarify the role of the POs regarding innovation.
19. Given the marketing and promotion needs identified in the multiannual national plan for aquaculture, it could be useful to make a clearer reference to the marketing of aquaculture products under priority 5 (Art. 66 and 68). If this is not the intention, it should be explained how this need will be addressed.
20. The EMFF OP should explain more in detail what the connection is between the national integrated maritime policy plan and the North Sea Agenda on the one side, and the EMFF implementation on the other. It should explain whether the EMFF contributes in any way (apart from aquaculture) to achieving the objectives connected to "blue growth".
21. The EMFF OP includes measures aimed at filling knowledge gaps relating to marine litter and underwater noise, these are important from a marine environment perspective. However, the text should clarify how these actions will be complementary to, and build upon, the work being carried out at EU level on these same issues, funded from the IMP financial instrument (Regulation 1255/2011) and EMFF direct management.
22. Concerning the IMP objectives mentioned in the Introduction to 3.1 'Europe 2020 and the IMP', please add a reference that the EMFF can besides contributing to the objectives of the MSFD, also contribute to the implementation objectives of the maritime spatial planning directive, should this prove necessary. .

SECTION 4 REQUIREMENTS CONCERNING SPECIFIC EMFF MEASURES

23. Please explain how the OP will contribute to the establishment of a coherent network of fish stock recovery areas.

24. In the description under section 4.1 of how the EMFF will be used to support the cross-border, multi-stakeholder management of the Doggersbank Natura 2000 area, please add, besides all the specific activities already listed, a reference to the possibility of using the EMFF to also address the issue of integrating the Natura 2000 management planning with the coordinated cross-border spatial planning (involving all four Doggersbank Member States) which the MSP Directive requires.

SECTION 6 FULFILMENT OF THE EX-ANTE CONDITIONALITIES

25. In the current version of the draft OP, not all criteria for fulfilment are adequately assessed. Please provide with the next version the assessment of all EMFF ex-ante conditionalities at the required criteria level.
26. Non applicable general ex-ante conditionalities 1, 2 and 3 should not be assessed in the EMFF OP.

SECTION 7 DESCRIPTION OF THE PERFORMANCE FRAMEWORK

27. Please verify that the financial indicators in the Table 7.1 refer to the total amount of eligible expenditure as required by the Article 5(2) of the Commission Implementing Regulation (EU) No 215/2014 of 7 March 2014.
28. For Union Priority 3 and 5 there is a discrepancy between what is indicated as targets in the performance framework and in chapter 3.3. It would also be necessary to specify the distribution of resources over the market measures, and especially the rationale for the allocation to production and marketing plans (Art.66).

SECTION 8 FINANCING PLAN

29. The table for the annual breakdown 8.1 does not include the performance reserve.
30. The ring fenced amounts for Control and enforcement, Data collection, Storage aid and IMP must be respected and cannot be used for technical assistance.
31. The 6% threshold for technical assistance must be based on the total public amount (EU + national) for the OP.
32. The performance reserve must be 6% in total and may vary between 5 to 7% per union priority. Please round the financial figures in Tables 8.1 and 8.2 to the nearest entire Euro and ensure the coherence between text and tables of the programme.

SECTION 9 HORIZONTAL PRINCIPLES

33. Please ensure that the indicative amount of support for climate change objectives as required under Article 27(6) is provided in accordance with the agreed tracking

methodology. Please also expand on how the measures for the fisheries, aquaculture and the processing sector will contribute to climate change objectives.

SECTION 10 EVALUATION PLAN

34. Please clarify when evaluations are foreseen, how expertise for the different aspects of the OP will be included and an estimation of the resources available for evaluations.

SECTION 11 PROGRAMME IMPLEMENTING ARRANGEMENTS

35. It is important that the monitoring committee has the competence to monitor all the areas of the OP, including climate change and IMP.

SECTION 12 INFORMATION ON THE BODIES RESPONSIBLE FOR IMPLEMENTING THE CONTROL, INSPECTION AND ENFORCEMENT SYSTEM

36. Please clarify, in accordance with the ex-ante conditionality on control, the human and technical resources available for fisheries control, inspection and enforcement.
37. Regarding the list of operations, please clarify the description under measure C and for measure H, please consider including participation in EFCA trainings.
38. The link between the measures and the control priorities should be further explained.

SECTION 13 DATA COLLECTION

39. The DCF has been taken into account in the different parts of the Operational programme: preparations, recommendations from the ex-ante evaluator, SWOT analysis, Strategy, Indicators, EAC, Implementing arrangements and Chapter 13. Consistency between the different parts has been ensured. But there is no information on the DCF main categories of eligible expenditure over the whole period.
40. The role of the DCF national correspondent in the managements and control system (acting as a beneficiary or intermediary body) should be better explained.
41. An overview on the human and technical resources devoted to DCF should be included.

ATTACHMENTS OF THE OP: REPORT ON STRATEGIC ENVIRONMENTAL ASSESSMENT

42. The Commission notes that the strategic environmental assessment (SEA) was carried out adequately. The non-technical summary is well-structured and complete, including references to the contribution of the OP to Natura 2000. However, from the SEA report it is not clear if transboundary impacts may arise and if so, whether transboundary consultations have taken place. This should be clarified.

43. The summary of the management and control system and the maps must be attached otherwise the Commission cannot complete its assessment of the Dutch EMFF OP.