

Bilateral meeting between The Netherlands' authorities and the European Commission in the framework of Action 5 of the Action Plan for Nature People and the Economy¹

Day 1 & 2: 3-4/10/2018 – Meeting with authorities

Location: Provinciehuis Friesland, Leeuwarden, the Netherlands

Participating organisations: European Commission DG Environment unit D.3 for Nature Protection. NL authorities (NL AUT): NL Ministry of Agriculture, Nature and Food Quality (LNV, responsible for international biodiversity commitments, including EU biodiversity and nature policy); NL Ministry of Infrastructure and Water Management (I&W) and its executive agency Rijkswaterstaat (RWS), responsible for implementation of Natura 2000 in marine territory and large freshwater bodies, as well as WFD implementation); representation of the joint twelve Dutch Provinces (IPO, responsibility for nature policy in the Netherlands including terrestrial Natura 2000); Province of Fryslân (hosting the meeting). Institute for European Environmental Policy (IEEP, supporting the European Commission on the implementation of the Action Plan including the preparation and follow-up of the bilateral meetings).

The list of participants is enclosed in ANNEX I: **Participants list**.

Bilateral meeting Day 1: 'Dutch dilemmas'

The afternoon of Day 1 of the bilateral meeting was dedicated to one of the principle challenges facing NL AUT in the implementation of the Birds and Habitats Directives (BHDs) in the Netherlands: the potential conflicts between broader ecosystem restoration objectives and the need to meet Natura 2000 site objectives when they are based on a baseline that relates to an artificial / heavily modified / degraded ecosystem. This dilemma is arising because a number of policy commitments, in particular those related to restoring the ecological processes, dynamics and resilience of large water bodies, such as estuarine ecosystems, would lead to declines in /deterioration of certain habitats and species for which Natura 2000 sites have been designated. These policy commitments are partly based on the objectives of the Water Framework Directive, but also to the national ambition to aim for climate-robust, sustainable ecosystems. The dilemma's also arise with integrated approaches where social and economic objectives are combined with nature objectives such that an overall gain is achieved for Natura 2000. These projects face difficulties because (small) negative effects are assessed separately within the regulations, prohibiting the positive gains to be made.

NL AUT (MinLNV, Mini&W and IPO/provinces) provided a detailed presentation outlining these challenges, as well as a second presentation illustrating it through four specific cases (**Error! Reference source not found.**). The cases were also presented in more detail in a document, entitled 'Natura 2000 dilemmas in the Netherlands', which was shared with participants before the meeting. The Provinces presented an additional three cases presenting particular challenges (**Error! Reference source not found.**). In order to make the discussion more concrete, each of the cases presented in the

¹ Action 5: Use the new Environmental Implementation Review process for dedicated bilateral meetings with national and regional authorities to develop agreed roadmaps to improve implementation and consult with landowners and other stakeholders on implementation challenges, for full reference see SWD(2017) 139 final, p13, http://ec.europa.eu/environment/nature/legislation/fitness_check/action_plan/factsheets_en.pdf

report was discussed independently. For brevity, the issues concerning each site are only briefly described in these notes (as details are provided in the annexes), which instead focus on the key discussion points and the conclusions that were drawn.

Lastly two representatives of Province of Friesland provided separate presentations on Natura 2000 implementation in Friesland and on the new collective approach to agricultural nature management in NL as implemented in one of the Frisian regions (**Error! Reference source not found.**). The latter presentation included a possibly interesting case study on nature-inclusive agriculture by Agrarisch Collectief Waadrane (INTERREG).

1. **Grevelingen** (NL4000021/NL4000021, stagnant saltwater lake created after damming former estuary)

*In summary²: 'To counteract low oxygen concentration due to the stagnant conditions, limited tide will be reintroduced. This will have positive effects on saltmarshes and intertidal habitats, foraging birds, seals, fish and benthic animals. On the other hand, this will have a negative effect on some terrestrial protected habitats and species [in particular the Fen Orchid (*Liparis loeselii*)].'*

The Commission responded that as a general principle the BHDs were not written to simply maintain the *status quo*, and, therefore, not allowing the restoration of an artificial situation to a more natural one to comply with procedures would defeat their purpose.

NL AUT asked if their proposed way forward to treat the proposed actions as conservation measures under Art 6.1 would be the way to go about this, and the Commission agreed it would if they are measures that address the conservation objectives for the site. The Commission also highlighted that Member States are not obliged to achieve favourable conservation status (FCS) at a site level, but at biogeographical and country level, and it is not always possible to carry out measures at each site that benefit all the species and habitats for which the site was designated. So NL AUT would in this case not contravene their legal duties if, for example, the Fen Orchid declined on the site, if it had sufficient opportunities to thrive in other places to achieve or maintain its FCS. However, it would be necessary for the NL AUT to carry out a careful assessment of expected site level effects on habitats and species listed on the Standard Data Form (SDF), and to ensure that reasonable efforts are made to avoid and reduce negative effects on all such listed habitats and species, and then to consider the potential overall impacts on the ability to achieve or maintain their FCS, taking into account the interdependence of the conservation objectives of Natura 2000 sites from a national perspective. The Netherlands have within Europe a special responsibility for the conservation and development of estuarine habitats, since The Netherlands (contrary to other countries) offer some more rare opportunities for the development of such values. It is therefore appropriate to give the development of those values a higher priority than other objectives. Based on this, appropriate changes to the SDF and conservation objectives may be made, for example to 'downgrade' certain conservation objectives compared to the level at the time of designation or to remove the objective. The Directive allows for establishing priorities when designating sites. For example, although the SDF must list all habitats and species of community interest present at the time of designation, those that do not need conservation measures at the site to maintain/restore their (national) FCS could be not considered as

² Taken from brochure

features for which the site has been designated ³. In that way actions that lead to declines in those species and habitats, such as those resulting from changes in the ecosystem from an artificial/heavily modified to a more natural state, may be consistent with the sites' objectives. NL AUT agreed with the views expressed by the Commission but pointed out that in the Grevelingen the largest population of Fen Orchid occurs and that some stakeholders will probably challenge such an interpretation in court.

2. **Krammer-Volkerak** (NL1000021/NL1000021, freshwater lake created after damming former estuary)

In summary: 'to recreate the more natural conditions, salt water influence and tide may be reintroduced. This will have a positive effect on salt marsh habitats and a range of breeding and wintering birds, but on the other hand has a negative effect on several protected freshwater species;'

NL AUT indicated that this case is similar to Grevelingen but the shift from freshwater to a saltwater system would lead to the complete loss of certain features from the site. This large site (6,000 ha) is very important for the common pochard (*Aythya ferina*) that is decreasing nationally and significant declines would be expected as a result of the proposed ecosystem changes (which cannot be feasibly avoided or reduced) that could in turn have a detrimental impact on its overall conservation status. Therefore, although the Commission advised that a similar approach as suggested for Grevelingen might be appropriate, there is some uncertainty on whether the proposed changes could be consistent with the conservation objectives for the site. In this situation it might have to be treated as a project (for other objectives, such as water quality), and therefore subject to Article 6.3 and 6.4 requirements for an appropriate assessment, and compensatory measures for unavoidable impacts. If adequate compensation measures are not found the project should not be allowed. It is possible to make a differentiation in the priority of species, in the management plan. Such differentiation should be taken into account in an impact assessment. For this site, just as is the case for Grevelingen, a higher priority can be reasoned on the basis of the quite rare opportunity this site offers within Europe to develop estuarine nature. This is appropriate from an ecologically point of view. The juridical aspects of such a prioritization should be further explored.

Given the situation the case might therefore need to go to ECJ for a question for a preliminary ruling, and then the Commission would be required to provide an opinion to the Court. NL AUT indicated that BirdLife would in any case most certainly oppose the proposed project in court because of its impacts on Tufted duck; either aiming to prevent the project, or achieve an even more ambitious (but infeasible) project with full restoration of the estuary.

As this is a complex case with some uncertainty, the Commission offered to give it further consideration and provide written comments on each of the NL AUT cases set out in the presentations (see **Error! Reference source not found.**).

3. **Eems-Dollard** (NL2007001, estuary of the Ems river into the Wadden Sea, suffering from siltation)

³ See concrete questions on the the case Grevelingen

In summary: 'for a better ecological quality and to improve the quality of H1130 Estuaries, silt will be removed from the system, which will have a negative impact on the surface area of this habitat type;'.

As before, the Commission advised that the project should be framed under Art 6.1 if it concerns conservation measures for the site. If the project has multiple objectives that are not closely aligned to the site objectives, then it needs to be subject to Art 6.3 requirements. NL AUT clarified that the foreseen measures are part of a major water investment programme, and this public expenditure needs to be justified by multiple benefits and would not get funding if just for nature.

NL AUT pointed to another challenge, i.e. that NL is below its Favourable Reference Area for estuaries. The Commission responded that the surface area is just one of the parameters that determine the status of a habitat, and that an increase in quality combined with a small reduction in surface area can still mean that the status of the habitat type improves. Deterioration depends on the size of the phenomenon, as not every negative effect is significant and the mere likelihood of significant effects does not automatically mean that the site's integrity is adversely affected. The Commission further mentioned that there may be an option for the conservation objectives for the site to seek to improve the quality of estuary habitat rather than its area, however this has some uncertainties and may be difficult to justify under an Art 6.1 if challenged.⁴ The Commission therefore suggested it may be better to look at the interpretation of the habitat types at the site, and how they are listed on the SDF. NL AUT pointed to the challenge that in NL the approach taken in the SDFs has been to treat salt marsh separately from estuary unlike in other Member States such as DE. As no conclusion could be reached at the meeting, it was agreed that NL AUT will put forward a proposal and seek the Commission's opinion on it.

4. IJsselmeer, Markermeer & IJmeer (NL9803028 and NL9803029, freshwater lakes created after damming former estuary – two separate SPAs and no SAC unlike three other cases)

In short: 'the ecosystem of these lakes has been significantly changed in response to, inter alia, reduced nutrient levels. This has had a negative effect on benthos and fish biomass and therefore on the carrying capacity for several protected bird species that feed on benthos and fish. As a result, conservation objectives for birds based on the historical references used may not be achievable.'⁵

NL AUT explained that due to water quality improvements, the lake ecosystem has shifted to a new stable lower nutrient system, which is generally desirable and meets reference conditions used under the WFD, but this has a lower carrying capacity for certain bird species. Subsequently, BirdLife won a court case that required NL AUT to address this by improving the situation for these species. NL AUT aim to do this by creating more natural wetland habitats with gradients, shallow areas and islands (including 'Marker Wadden' project), which they consider will have significant beneficial impacts but which are difficult to predict and quantify with certainty. The NL AUT therefore asked the Commission how this uncertainty could be dealt with when revising the site objectives for water birds, which were originally set on the historical references corresponding with previous unnaturally high population

⁴ See concrete questions on case Krammer Volkerrak

⁵ It is a matter of the chosen period: for WFD we aim at a lower nutrient level (so an earlier reference in time) than for Natura 2000 (reference is later in more nutrient rich situation)

levels due to eutrophication of the system. Consequently, a correction needs to be made, which also needs to take into account the implications of the WFD objectives.

The Commission suggested that again the most important principle is to consider the situation at a Flyway/ EU/ National level ⁶, and then to revise the objectives for the birds within each site accordingly. The NL government has the flexibility to adapt site objectives according to such considerations based on scientific insights.

5. Wieden en Weerribben

For ecosystem restoration and management purposes, NL AUT wish to carry out peat digging over 540 ha of a low moor site to recreate earlier successional stages/habitats, but this will have some negative impacts on certain other habitats and species for which the site was designated. Another challenge is that it will lead to significant GHG emissions, conflicting with NL climate change mitigation objectives.

The Commission responded that NL needs to consider the bigger picture in both climate and biodiversity objectives, which will help to put the case in perspective. Thus the key questions are whether or not the measures will prevent NL from meeting its objectives for the habitats and species that may be negatively impacted and achieving its climate objectives. With respect to the biodiversity objectives, this causes similar problems as those discussed in case 1 above. See there for further discussion. With respect to the climate issue, it was noted that the overall carbon sequestration and storage of Natura 2000 in the NL is massive, and it would therefore seem unlikely that losses from some sites, such as this one, would be significant.

As peat removal is costly, consideration is being given to selling the peat to help fund the restoration measures. NL AUT therefore asked if this would mean that the measures need to be treated as a commercial activity that would require an appropriate assessment under Art. 6.3. The Commission responded that what happens with the peat after extraction is not relevant if the principal reasons for the actions are in accordance with Art 6.1 requirements, i.e. the conservation objectives for the site.

6. Sallandse Heuvelrug & Engbertsdijkvenen

This concerns two sites: Sallandse Heuvelrug, a sandy ridge with heathland and the last NL population of Black Grouse (*Tetrao tetrix*); and Engbertsdijkvenen, a peat bog, in which NL AUT aim to restore hydrological gradients by significantly raising water tables. However, both sites are surrounded by agricultural land with conflicting water management objectives (i.e. to maintain low water levels). Feasibility studies show that even the most ambitious hydrological restoration scenarios with proposed buffer zones might not achieve the necessary water levels for the habitats and species. Instead, the achievement of the required water levels would lead to much wider impacts that would be felt by hundreds of farms up to 10km from the sites.

The Commission noted that in this case it may not be possible to achieve the set of conservation objectives for the sites. In which case NL AUT may need to consider actions elsewhere to achieve the overall FCS of the concerned habitats and species.

⁶ Biogeographic regions are not relevant in the Birds Directive, so either national level, EU or flyway.

7. Rijntakken & Veluwerandmeren

This case concerned water safety, recreation and tourism, housing and nature developments as part of an Integrated Area Development within and near two Natura 2000-sites. This led to the creation of a new river with 350 ha of new nature-sites (green infrastructure), of which 43 ha extended the existing Natura 2000-site. Despite these gains in habitat, a court ruled that 0.135 ha of foraging habitat for the Eurasian Bittern (*Botaurus stellaris*) is likely to be disturbed by increased recreational boating from the Integrated Area Development, and ruled that additional compensation is therefore necessary. This has been carried out but has been difficult and expensive. The experience with this project is seen as an example of the (legal) risks for integrated nature-project, prohibiting partners to engage in other such projects.

The NL AUT therefore asked whether an appropriate assessment and calculation of compensation requirements under Art. 6.4 requirements should be for the Integrated Area Development as a whole, or for each component, as the court had ruled. The Commission responded that an appropriate assessment can cover multiple elements as long as it covers all impacts and makes a distinction between impact avoidance and reduction (i.e. mitigation measures) and compensation measures. In this case the Dutch Court seems to have taken an extreme view. The Commission does not think there is any jurisprudence on this, and it may be necessary to consider this case in the new guidance that is being prepared on Art 6.4.

Operational conclusions:

NL AUT will submit further details on the five presented cases where there are dilemmas on the interpretation of the Directives and Article 6 issues and request the Commission's views.

The Commission will provide its views and initial guidance on each of the five cases once the request has been received.

The Commission will take the dilemma's into account when updating the Art. 6(3) and (4) methodological guidance, and will invite NL AUT to comment on the drafts.

Bilateral meeting Day 2: Agenda items not discussed on Day 1

Location: Afsluitdijk Visitors Centre.

Agenda items 1 and 2 were also discussed on Day 1 but are presented here for clarity. The morning of Day 2 was dedicated to field trip to the Afsluitdijk visitors centre where participants were briefed on plans for the world's first artificial fish migration river between the IJssel Lake and Wadden Sea.

1. Progress in completing the Natura 2000 network

The Commission asked NL AUT about progress on the Polder Stein . NL AUT answered that the minister would make a decision next week. There is only one farmer in the area who has no problem with the designation, however the agricultural sector made a symbolic political case out of it and Minister Schouten (and predecessors) was asked for clarification by Members of the Dutch Parliament. Given the minister's policy priority of further reconciling biodiversity and farming interests the minister wants to make sure the designation is made in a careful way, which caused the delay.

The Commission asked about the remaining insufficiencies as it received new input from the ETC-BD concerning the ongoing pilot. It indicates there is a remaining issue on sufficiency for Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or of the *Isoëto-Nanojuncetea* (3130) (IN MIN). NL AUT have claimed completeness is 75% but ETC does not understand where this justification is based on. Moreover, ETC has highlighted insufficiencies on three species (1831 *Luronium natans* (IN MIN), 1081 *Dytiscus latissimus* (IN MAJ/IN MIN), and 1355 *Lutra lutra* (IN MAJ/IN MIN)). There are also issues on IBAs, similar to those raised in 2016, concerning the SPA overlapping with the IBAs "Westplaat" and "Mainland coast", which only cover a small area of these IBAs, and the area corresponding to the IBA "Brown Ridge" which has not yet been designated as SPA . These issues still require a clarification from NL AUT.

Operational conclusions:

NL AUT to update the Commission on the decision by the minister on the Polder Stein.

The Commission will share ETC-BD outcomes (via Pilot) and NL AUT will provide a response.

2. Progress in designation of Special Areas of Conservation under Article 4, paragraph 4 of the Habitats Directive

No issues were discussed on this agenda item.

3. Governance issues

a. Reorganization of roles under the new Nature Conservation Act⁷

The Commission asked how NL AUT managed the decentralisation transition (i.e. the transfer of most nature conservation responsibilities to the Provinces), and in particular in relation to institutional capacity, in the light of various other Member State experiences with similar transitions.

⁷ <https://www.government.nl/topics/nature-and-biodiversity/legislation-protecting-nature-in-the-netherlands>

IPO explained that the process of the transition differs significantly between provinces, also because the state of the nature values differs between the provinces. Each Province has had to increase capacity, which has been finalised but speed at which it was achieved differed in each province. Already since 2006 certain tasks had been decentralised, so cooperation and coordination routines were already in place. Moreover the dissolution in 2015 of the decentralised Rural Area Service agency (Dienst Landelijk Gebied or DLG) with various regional offices meant experts could move to the Provinces. The Nature Pact has also helped to focus actions, including on Natura 2000. It was difficult to decide on how to share out the budget between the Provinces, but it was discussed and after a year it was agreed. In practice, it is still not always clear to everyone who has responsibility for what. For example, the minister responsible for nature receives many questions in national Parliament that should be answered by Provinces. Normally the information flow from and to Provinces is smooth but not always. Currently the Provinces are investing a lot of energy in the development and implementation of Natura 2000 management plans and the Programmatic Approach to Nitrogen (NL: PAS). As these are expected to greatly reduce permitting burdens, Provinces have an internal incentive. Management plans also bring more focus to Provincial nature policy. The implementation of the first 3 years of the Nature Pact was evaluated last year, and although some issues of concern were identified, overall the assessment was good.

b. Objective setting

The Commission pointed out that the NL Nature Pact will run out in 2027, and asked NL AUT if it would consider defining its future goals along the same lines as the Paris Agreement, i.e. as a 'nationally determined contribution', in support of the next CBD Strategic Plan. In this respect, the Commission wishes to make CBD and EU biodiversity strategy targets and actions more SMART and base them on Member State voluntary quantified commitments. To facilitate this, they are encouraging Member States to link site goals to large scale objectives that can then be quantified.

The NL AUT explained their approach towards the international process in the context of the Convention on Biological Diversity (post 2020 process). This approach also involves the Provinces in that sense they are an equal partner in the Dutch CBD delegation in EU and global context. The NL position towards the post 2020 prospects and target setting is along the lines of the Paris agreement NL is in favour of national contributions, involving non-state actors beside that that CBD targets should be more SMART, with milestones and a review process, as they currently lack implementation.

This links up with developments in NL. According to PBL, there remains a significant biodiversity challenge in and outside of Natura 2000. PBL therefore recommends that there should be a target and targeted approach for this challenge. NL AUT is already consulting with other stakeholders on what such a target and approach could look like.

The Commission indicated that internal discussions are underway on how to get commitments that are SMART and also comparable among Member States. Furthermore, the CBD process could help with discussions with stakeholders in the EU on future actions (e.g. on the scale of ambition of actions), which could give a boost to the BHDs implementation. The Commission therefore considers that it would be helpful if Member States would come forward with concrete proposals, which would also make it clearer what level of funding would be required to meet them. The Commission therefore invited NL AUT to take this opportunity to consider their own ambitions regarding the scale and pace of improvements, and also the potential use of EU funds in this respect.

The Commission asked an additional question on the target setting in NL Nature Pact, in particular what would the achievement of 100% of the target mean for the overall status of species and habitats? NL AUT answered they are currently discussing with PBL to develop an aggregated indicator of around 500 species that would be representative of NL biodiversity. The Commission asked NL AUT to further consider how FCS will be achieved for the habitats and species not covered by the PBL study. NL AUT agreed they will, even if this needs a Nature Pact 2.

c. Cooperation between sectors

The Commission asked about the foreseen new Spatial Planning Act under preparation (Ow). NL AUT explained that competence for spatial planning recently moved to the Ministry of Interior Affairs and Kingdom Relations (BZK) where before it was with the ministry of Infrastructure and Water Management (I&W). The new act should be adopted in 2021. All nature protection law will be included, but the Ow will only consolidate existing policies, so no changes will be made to individual acts. The Ow requires a document with the national policy on the complete spatial domain, the Nationale OmgevingsVisie (NOVI). The provincial nature policy will be within the outlines of the NOVI. The provincial nature policy will also include species protection outside of the National Nature Network (NNN). Given the size of the act, it will be presented in parts, and the first section on guiding principles will be presented to parliament this autumn. As the Ow will have to integrate environmental principles from different existing acts into one, it risks losing the meaning of some similar but slightly different concepts critical to achieve BHD objectives (e.g. no deterioration vs. standstill) and possibly a lower legal baseline once a final text has been agreed. The Commission agrees this is a risk, but also sees an opportunity to examine the coherence of the Natura 2000 network, something which was recently done in Lombardy with support of a LIFE Integrated Project. NL AUT indicated that this is already taken into account in the design of the NNN (668,000 ha), 40% of which comprise Natura 2000 sites, and there is a plan to extend the NNN by another 40,000 ha on land.

Operational conclusions:

The Commission and NL AUT agreed to work together on new commitments within CBD/Post-2020 framework, and will use (political) opportunities to discuss the level of ambition and speed of action that other key policy/economic sectors may adopt to achieve these commitments.

NL AUT will send the Commission the draft Ow guiding principles section.

4. Management of Natura 2000 sites

The Commission pointed out that from the answers to the questions in the annotated agenda the impression is given that the focus of Natura 2000 management in NL is very much about conserving current values rather than restoration, while a large majority of habitats and species remain in unfavourable conservation status. The NL AUT were therefore asked to clarify their approach.

NL AUT answered that many restoration measures have been taken/are ongoing and that there is still around 40,000 ha of NNN to be realised which will further help 'buffer' Natura 2000 sites and improve the ecological coherence of the network. In particular, there are major ongoing efforts to improve hydrological conditions, but as illustrated on Day 1 (see cases Sallandse Heuvelrug and Engbertsdijkvenen) currently some sites are too small to achieve the required water levels without

major impacts on the surrounding landscape. Therefore NL does not want to commit to FCS within legislative term(s) but rather to strive towards achieving it.

The Commission clarified that Member States need to show improvements in the trends of habitats and species. A discussion then needs to be had on the speed of improvements, and this needs political engagement and support. NL AUT answered that based on the last reporting round there is great progress comparing to the current condition status. NL AUT indicated that the Nature Pact is aiming to achieve the right conditions of 65% of the habitat types and species in 2027 and that they are working on a way to achieve the remaining 35% in the time after 2027.

The Commission asked if NL AUT foresee any problems with completing the management plans as envisaged. NL AUT replied that they do not foresee major problems in completing the plans themselves. However, some actions in the plans may be constrained, such as from historic nitrate pollution through groundwater and which may restrict results for some sites. Nitrates action programmes and PAS are running and NL hopes to be within target range for all sites in 2040-50.

The Commission followed up on the nitrates challenge, and recalled that under the EU Nitrates Directive NL decided to apply an Action Programme to its entire territory. However, it is difficult for the Commission to keep granting derogation under the Nitrates Directive to apply more N which, given the large efforts to reduce N pollution under both NL water- and biodiversity objectives, seems inconsistent and undoing one measure with the other. The Commission asked NL AUT when it will have a national debate on this and come to a more appropriate way forward. NL AUT replied that the Dutch minister of Agriculture, Nature and Food Quality (Ms Carola SCHOUTEN) presented a new vision of agriculture for the Netherlands, which for the first time recognizes that NL agriculture cannot continue on a business as usual scenario. Reducing production and the livestock herd is not a starting point in this vision, but could be one of its outcomes.

The Commission expressed a hope that NL do not miss this policy window, and pointed to the opportunities the newly proposed CAP offers, and in particular the measures in the upcoming CAP Strategic Plans to integrate environmental objectives. If there is a political will in NL to change its agricultural model, the new CAP will provide more flexibility for Member States to do so.

On fisheries, the Commission regrets that fisheries measures are not included in marine Natura 2000 management plans for offshore sites and that Member States have so far made very little use of the possibility to agree on Joint Recommendations under Article 11 of the CFP, and in several cases where an attempt was made negotiations have stalled. The NL AUT were asked how it is dealing with fisheries impacts on three NL Natura 2000 sites in the EEZ. NL AUT answered that it is now finalising impact studies and therefore it is too early to be able to include measures in management plans, however this is certainly the intention. NL is currently doing an inventory for all marine sites of all activities that are taking place, including fisheries. Once results become available, NL will review implications and discuss them with stakeholders including with other Member States fishing in Natura 2000 sites in the Dutch EEZ.

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| <u>Operational conclusions:</u> |
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NL AUT to keep the Commission updated on NL efforts to develop a more consistent and systematic approach to reducing N pollution, and plans to more strategically use current and future CAP measures to support it.

NL AUT to keep the Commission updated on fisheries impacts and measures in marine sites and progress on negotiations for measures in the EEZ.

5. Strategy for reaching FCS

The Commission is interested to include the Dutch approach to ‘temporary nature’ into the guidance on species protection that is currently being updated, and asked how NL reconciled this approach with derogation requirements in the Habitats Directive. NL AUT answered that derogations are granted under Article 16(a) (in the interest of protecting wild fauna and flora and conserving natural habitats), arguing that because species are moved before economic developments takes place NL contributes to their net FCS. More information on the Dutch temporary nature experiences can be found in the final evaluation study (link in Country Profile) and project website (with newsletter): <http://www.tijdelijkenatuur.nl> There is also a 1-day course for practitioners planned, with so far three sessions planned on 01/10/2018, 18/06/2019 and 24/09/2019.

Operational conclusions:

NL AUT was invited to share future additional evidence/experience on the temporary nature approach and contribute to/review the updating of the Commission guidance on species protection.

6. Implementation Article 6.3 and 6.4

Following up on the issues concerning fisheries measures and appropriate assessment (also see Q4 above), the Commission asked if it is too challenging to have assessments and permits for each fishing activity, and whether NL has in place another system to monitor impacts and take measures to avoid deterioration in case of worrisome trends? NL AUT answered that for all marine impacts a normal appropriate assessment is undertaken, however there are additional complexities with fisheries due to their international character and cross-over with CFP. In particular, a major barrier in negotiations on joint CFP fisheries recommendations is lack of knowledge. The Commission noted that it will be paying more attention to such issues in future.

NL AUT also noted that NL marine areas are under a variety of pressures and activities, which does require strategic planning. In this respect that the Commission drew attention to the contribution that the Marine Strategy Framework Directive and Marine Spatial Planning Directive can play in strategic measures to deal with such issues.

The Commission asked about the severity of impacts from renewable energy. NL AUT indicated that renewable energy impacts are currently not a major issue. There are some concerns over high rates of fish mortality in some hydropower installations, but there are ongoing discussions with the energy company (NUON) to reduce impacts. A potential future major issue may be the expected increase in wind power, but a lot of ongoing work is being carried out to prevent impacts (through location restrictions) and reduce impacts (e.g. temporary termination of operation). Discussions are also taking place on solar power, in particular its suitability in NL given the large area of land that it takes up. At the end of 2018 a climate agreement (‘Klimaatakoord’) is expected that will include energy. However,

its focus will be mostly on energy efficiency. Another ongoing discussion is on which measures to prioritise that could contribute on climate/energy policies and nitrogen reduction (and those that should be avoided due to their perverse effects).

The Commission reminded NL to provide updates on projects that have required compensatory measures in accordance with Article 6.4. NL AUT replied that it does inform the Commission of all such cases, but compensatory measures have hardly been required in recent years (although one proposed project case being considered at the moment may do so in future). The reason is that in NL project proponents try to avoid residual impacts due to the difficulties of providing compensation. Besides, it is hard to qualify for IROPI and often there are alternatives, so you are left with mitigation (see case Reevediep). NL AUT asked when it should inform the Commission of compensation measures. The Commission answered that the BHDs do not specify a requirement on this, and in principle ex-post notification is acceptable. However, the Commission encouraged NL AUT to reach out pro-actively to the Commission in the early planning stages of large/challenging developments if cases arise that may need compensation, in which case the Commission can advise.

Operational conclusions:

NL AUT to share assessment of the fisheries and other marine impacts in EEZ.

NL AUT to update COM once new Climate Pact is adopted and on other relevant potential renewable energy plans and programmes etc. (in particular wind energy production in large water bodies) that may have major impacts on BHD habitats and species in Natura 2000 and elsewhere.

7. Species protection measures

On meadow birds, the Commission noted that the NL approach has a large reliance on voluntary measures and that monitoring results do not show they have been effective. The NL AUT were therefore asked what their intentions are to deal with this and if more binding measures are foreseen, as additional financial incentives may not lead to adequate change.

NL confirmed that their approach is based on voluntary measures and that it is envisaged it will stay this way. The challenge is that the bird populations concerned are spread across the countryside and NL AUT cannot designate the entire NL as an SPA. In the framework of AEWA a request was made to change the annexes to the agreement to ensure better protection of some species. The Netherlands deeply regrets that birds they are protecting can be legally shot later in the migration season along the flyway. NL AUT added that agri-environment schemes have been improved under the current 2014-20 CAP, moving from individual schemes to a collective approach in order to create landscape-scale effects. The new scheme now covers 68,000 hectares, and 23,000 of on-going schemes under the old schemes that will be phased out. Only part of these 23,000 will return under agri-environment under the new scheme as NL AUT aim to target smaller areas with higher ecological potential. NL AUT argued that monitoring of the new approach has been too short to draw conclusions on its effectiveness of the new scheme, and if additional measures are required.

The Commission reacted that it understands that agri-environment schemes address the issue, but given their track record asked NL AUT what their plans are if the schemes are not sufficiently effective. NL AUT confirmed there is currently no Plan B, as an ex-ante evaluation indicates that the new

approach should achieve its aims. Next year NL will submit its BD Article 12 reporting which will provide an important evaluation milestone.

COM added that NL AUT still have to respond to last set of additional clarifying questions under the EU pilot.

Operational conclusions:

NL AUT to answer outstanding clarifying questions under EU pilot on meadow birds.

NL AUT to share any relevant additional monitoring evidence that comes available.

8. Financing for Natura 2000

The Commission asked when NL AUT expect to share its draft Prioritised Action Framework (PAF) and if COM will receive more than one PAF now that responsibility for nature financing is with the twelve Provinces. NL AUT stated that it expects to share a draft early next year and confirmed it will be a single document.

The Commission informed the meeting of support for the Member States in accessing EU funds that is being provided through the separate contract between EC DG ENV and IEEP/N2K Group to support investments in Natura 2000, as well as a DG AGRI WG dedicated to improving CAP uptake for Natura 2000 implementation.

NL AUT asked whether it would be possible to share a draft PAF with COM for feedback? The Commission confirmed this is possible.

The Commission emphasised that it is in the interest of NL AUT to send timely plans on Natura 2000 funding requirements including from EU funds through a PAF, so that such funding needs can be fed into the Commission's MFF proposals, to ensure a good match between funding priorities and opportunities. By showing needs from different funds, the PAF is also a key tool to push policy integration.

The Commission also specifically highlighted the new opportunities provided, under the proposed LIFE programme, through Strategic Nature Projects (SNaPs), which are similar to current Integrated Projects but are slightly adapted and exclusively reserved for projects delivering on EU nature policy objectives. The Commission encouraged NL AUT to make use of this new opportunity.

NL AUT noted that they are interested in regional schemes, such as in Friesland, to fund soil improvement measures. The Commission confirmed that it should be possible to have regional schemes as the new CAP increases Member State subsidiarity, and reiterated the importance of the proposed CAP Strategic Plan to ensure policy integration and coherence and adequate funding for it. An important new tool are so-called eco-schemes, which are funded through Pillar 1 and under the new CAP proposal would be obligatory for Member States to develop – but voluntary for farmers to participate in. If incentives are good enough, AUT can attract farmers to certain activities delivering environmental services. The Commission urged NL AUT to actively engage in the development of the CAP strategic plan of NL to avoid a mismatch with environmental objectives.

Operational conclusions:

NL AUT to share advanced draft PAF with COM as soon as possible.

NL AUT to actively engage in the development of the CAP strategic plan and to maximise EU funding for Natura 2000, in particular new CAP tools and LIFE SNaPs.

9. Access to Justice and Public Participation

In relation to Access to Justice, the Commission expressed some concerns that it is only possible in NL to appeal a decision if a formal interest and objection has been expressed during the public consultation beforehand. NL clarified there is twice an opportunity for all stakeholders (including lower government bodies such as Provinces and municipalities) to object both in the planning and permitting phase, but it is not possible to appeal against a permit decision if no prior objection was sent on the draft permit. The Commission therefore pointed NL AUT to a recent court case (C-243/15 - <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-243/15>) which seems to conclude that it should not be necessary to have participated in a consultation process in order to appeal; in which case this may require less restricted access to appeals than currently provided for in NL.

10. Monitoring and knowledge

No issues were discussed under this topic.

11. Communication and public awareness

The Commission reminded NL that next year it intends to have an update on its Eurobarometer report asking EU citizens about their attitudes towards biodiversity, which includes questions on Natura 2000. In the last Eurobarometer report in 2015, 19% of Dutch respondents had heard about Natura 2000 and of these only 8% knew what it was. The Commission expects this can improve, especially as NL with the Wadden Sea, other extensive estuaries and IJsselmeer have various Natura 2000 sites of particular international significance. NL AUT indicated they have made some efforts in recent years, including working with UNESCO at EU level to increase awareness and tourism. The Dutch Parliament asked for more branding of national parks, which is therefore in the MinLNV work programme. Another idea currently explored by NL AUT is to use Natura 2000 to brand products, but it seems challenging to get approval. A recent idea explored is to make better use of flagship species in relation to Natura 2000, which is currently done by some of the Provinces. Despite these ideas, NL AUT admit there is still significant scope for improvement including in basic communication at site level such as showing the logo and short description of Natura 2000 which currently is only the norm under LIFE projects where it is an obligation.

Operational conclusions:

NL AUT to revive and focus action to increase awareness and understanding of Natura 2000.

12. A.O.B.

Operational conclusions:

NL AUT and COM agreed on a follow-up bilateral meeting in Brussels in the near future.