European Anti-Fraud Office (OLAF)
European Commission
1049 Brussels
Belgium

13 June 2018

Re. Serious irregularities in the use by the Netherlands of the European Fisheries Fund (EFF) and the European Maritime and Fisheries Fund (EMFF) in the development of electric 'pulse' fishing.

Dear Mr. Director-General,

We write to you today to report serious irregularities in the use by the Netherlands of two EU Structural Funds: the European Fisheries Fund (EFF) and the European Maritime and Fisheries Fund (EMFF). For the reasons outlined below, we suspect a case of fraud with substantial consequences on the EU budget, which we ask OLAF to investigate.

These irregularities involve public subsidies granted for the development of electric 'pulse' fishing, which is a technique developed by the Netherlands. Below, we provide you with a brief background note on the legal framework, which allowed the development of this technique, before focusing on the new elements that we would like to bring to your attention today.

On the basis of the findings developed below, we call on you to initiate an investigation on the use of the EFF and EMFF funds for the development of electric fishing in Europe.

Despite the non-compliance of the Dutch Government with the EU transparency requirements regarding the publication of financial data provided to the fishing sector between 2007 and 2014, there is evidence that Dutch electric vessels and research institutes were granted substantial amounts of undue public subsidies during that period. We have established thanks to the online publication of EMFF data that between August 2015 and October 2017 only, 5.7 million euros (of which 3.8 million euros correspond to the EU contribution) were allocated to the development of electric fishing, but there is no detailed information available for the period covering 2007–2014 (spanning the 'EFF'; European Fisheries Fund), i.e. when most, and possibly all vessels were equipped with electricity, because the Dutch government is failing to publish the file of public subsidies granted (for details, see 'additional information' at the end of this document).

We defy the legality of these financial transfers on three counts:

1) Electric fishing massively expanded under the guise of **scientific research that was never conducted**;

2) The EU regulations under which public subsidies were allocated explicitly state that **public monies should not lead to an increase in fishing effort**, which electric fishing does; and,

3) If commercial fishing activities occur during the conduct of scientific research, **any profit generated during the operation must be deducted from the aid granted**, which we suspect was not the case.

Legal background

The use of electric current to catch marine animals was banned in Europe in 1998 through Article 31 of Regulation (EC) 850/98 (**Annex 1**) along with other destructive fishing methods such as explosives or poison. But using electricity to fish was authorized at the end of 2006 as a 'transitional technical and control measure'[1] by a provision laid down in Regulation (EC) No 41/2007 fixing for 2007 the fishing opportunities and associated conditions for certain fish stocks and group of fish stocks (i.e. the 'TACs & quotas' Regulation; **Annex 2**). This authorization was only valid for the year 2007 and allowed — as a general provision — the use of electricity as a derogation of Article 31 (1) of Regulation (EC) No 850/98 for a maximum of 5% of each Member State's beam trawl fleet operating in the southern part of the North Sea (**Annex 3**).[2] Importantly, this decision was taken in direct contradiction with the advice of the Scientific, Technical and Economic Committee for Fisheries (STECF), which expressly advised the Commission *not* to allow any derogations (**Annex 4**).

At that time, although all Member States could have granted a number of derogations to practice electric fishing in the southern part of the North Sea, only the Netherlands seized this opportunity. The Dutch administration granted 22 licenses, which was already breaching the legal limit of 19 vessels, according to the EU vessel registry as of 1 January 2007 (**Annex 5**). The overall number of Dutch beam trawls having gradually decreased since 2007, 5% would now equate to 14 legal electric licenses.

These initial 22 licenses have unclear status. Although Regulation (EC) No 41/2007 does not specify any conditions associated to the exemptions, the Council provides explicit interpretation of the 'esprit de la loi' that accompanies these licenses: they were meant to be "*on an experimental basis*" (**Annex 6**).

The derogation regime created through the 'transitional technical and control measure' to allow the use of electric fishing in the southern part of the North Sea was renewed for the years 2008 and 2009 (Regulation (EC) No 40/2008 and Regulation (EC) No 43/2009, respectively; **Annexes 7** and **8**).

Through Regulation (EC) No 1288/2009 establishing transitional technical measures from 1 January 2010 to 30 June 2011, Council prolonged these 'transitional technical and control measures' until 30 June 2011 (**Annex 9**). Article 2 of Regulation (EU) No 579/2011 prolonged yet again these 'transitional technical measures' until 31 December 2012 (**Annex 10**). They eventually lost their 'transitional' nature through Regulation (EU) 227/2013 — which amended Regulation (EC) No 850/98 (**Annex 11**) and therefore allowed to no longer require an annual renewal of exemptions.

To expand the use of electric fishing beyond the legal limit of 5%, the Dutch obtained a further 62 derogations in 2010 and 2014 under the guise of 'scientific research' on one hand and scientific 'pilot projects' on the other:

- 20 additional derogations were granted in 2010 using Article 43 of Regulation (EC) 850/98, which stipulates that "*this Regulation shall not apply to fishing operations conducted solely for the purpose of scientific investigations*" (**Annex 1**);
- 42 additional derogations were granted again in 2014 using Article 14 of Regulation (EU) 1380/2013, i.e. to "*conduct pilot projects […] with the aim of fully exploring all practicable methods for the avoidance, minimisation and elimination of unwanted catches in a fishery*" (**Annex 12**).

In both instances, these increases in the number of derogations went yet again against the advice of the International Council for the Exploration of the Sea (ICES; **Annex 13**) and STECF (**Annex 14**).

Overall, 84 Dutch trawlers are currently listed as using electricity.

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[1] According to Article 1 of this Regulation, an associated condition is a condition under which fishing opportunities may be used (Article 1: "*This Regulation fixes fishing opportunities for the year 2007, and the associated conditions under which such fishing opportunities may be used*". Therefore, this 'transitional technical and control measure' is one of the associated conditions.

[2] For these 5% of beam trawlers that were granted a derogation to use electric current under Regulation No 41/2007, electric fishing thus considered as an ordinary commercial fishing activity.

1) Never-conducted scientific research

Out of 84 licenses, 62 were explicitly granted in order to conduct scientific research or pilot projects while 22 others were meant to be for 'experimental' purposes (see legal background for details). But access to information requests on electric fishing by an investigative Dutch journalist of the *Nederlandse Omroep Stichting* (NOS is part of the Netherlands Public Broadcasting system) revealed that only 7 vessels in 2015 and 17 vessels in 2016 were required to transmit data to a research body, while 84 Dutch vessels were licensed to fish with electricity (**Annex 15**). Moreover, this data transmission was done automatically through a computer installed onboard by the Dutch marine research institute in Wageningen and appears to roughly correspond to reporting obligations already made mandatory in the European law ("*Er wordt vanaf 2010 wel onderzoek gedaan, naar bijvangst bijvoorbeeld en naar de brandvlekjes die vissen voor de Belgische kust lijken te hebben*"). In fact, a representative of the Dutch electric fishing sector acknowledged on the BBC that the electric fishing fleet was not a scientific trial,[1] which was also confirmed by Dr. Adriaan Rijnsdorp from the university of Wageningen and co-chair of the ICES working group on electric fishing (WGELECTRA): "*The Netherlands have gone beyond the legal framework in recent years by expanding the number of temporary permits. It seemed experimental, but researchers have never written a proposal for a research program that required 84 vessels [...] Fishing with electric 'pulse' trawlers is just more profitable*" (**Annex 16**).

Shortly after the NOS article was published, the European Commission summoned the Dutch government to justify the excessive number of derogations it had granted (**Annex 17**), to which Dutch Minister in charge of fisheries, Mrs Carola Schouten, abruptly replied that it was the Commission's fault if it had unilaterally decided to increase the number of derogations despite the absence of research activities (**Annex 18**).

These observations are supported by ICES, which warned in 2015 that "*the issuing of 84 licenses to carry out further scientific data collection is not in the spirit of the previous advice and that such a level of expansion is not justified from a scientific perspective. [...] This is well in excess of the 5% limit included in the current legislation. At this level this is essentially permitting a commercial fishery under the guise of scientific research*" (**Annex 19**). In 2013, ICES had already highlighted that: "*the WR40 […] was not followed up in a scientific project [and its] crew focuses on catch quantity (short return of investment) and less on catch selectivity*" (**Annex 20**).

Finally, a number of fraudulent incidents — in stark contradiction with any 'research' purposes — have been reported aboard electric 'pulse' trawlers, for example the use of nets with mesh below the legal size (**Annex 21**), large amounts of undersized fish, gutted and prepared to be marketed, which indicates the existence of an illegal market for juvenile fish (**Annex 22**) or illegal fishing in zones with seasonal closures (**Annex 23**).

2) EU public funds in breach of regulatory objectives

The law stipulates that 'pilot projects' should not be used in order to circumvent other rules (**Annex X**). In particular, their implementation can not be used to disregard the rules governing investments on vessels. Article 5 of Regulation (EC) 1198/2006 stipulates that "*operations financed by the EFF shall not increase fishing effort*", and Article 11 of Regulation (EU) 508/2014 states that "*operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish*" are not eligible to the EMFF. However, it is well known that the use of pulse trawls increases this ability, which was recognised by the European Commission as early as 2007. In his answer to a written question, Commissioner Borg stated that "*fishing with electricity […] can be extremely effective, (i.e. fish stocks can be rapidly depleted) and would therefore go against the aim of a long-term sustainable income for fishing communities*" (**Annex 24**). This position is in line with those expressed by numerous bodies (non-exhaustive list), such as:

- ICES, which stated that: "*the system appears to have a higher fishing efficiency for cod than the conventional gear and also has the potential to contribute to unaccounted mortality through fish encountering the gear but not being retained. Given that there is a need to further reduce fishing mortality*

[1] The interview is available at: www.youtube.com/watch?v=_7SjtpKofD8 (starts at 4'40).

on cod, widespread introduction of this system could potentially increase cod mortality rather than reduce it" (**Annex 25**).

- ICES also reported in 2018 that "*the higher catch efficiency of the pulse trawl for sole implies that the sole quota can be caught in less fishing time than with the tradition beam trawl*" (**Annex 26**).
- IMARES — the Dutch institute in charge of conducting the research on electric fishing — has also shown that, for the same fuel consumption, electric trawlers caught three times as much sole (i.e. the target species) as with regular beam trawls (**Annex 27**).
- In their assessment report for the MSC certification of the North Sea brown shrimp fishery, the certifier reported that "*[landing per unit of effort] values from individual vessels may increase over time due to 'technological creep' thus masking a stock decline. The most obvious change in efficiency would be due to the introduction of electric pulse fishing which can increase efficiency by 50%*" (**Annex 28**).
- Finally, scholars have also noted such an increase in peer-reviewed journals: "*the weekday effect found in sole lpue suggests that competition is related to the fishing activity of the Dutch trawler fleet. When Dutch trawlers fish from Monday to Thursday, sole landings of Belgian beam trawlers are lower, while the opposite occurs when the Dutch beam trawler activity drops from Friday to Sunday*" (**Annex 29**).

3) Deduction of profits

As evidenced above, we have solid indications that substantial public subsidies have been granted by means of the implementation of scientific pilot projects. Article 19 of Regulation (EC) No 498/2007 on the implementation of Regulation (EC) No 1198/2006 provides that "*3. Pilot projects shall not be of a directly commercial nature. Any profit generated during the implementation of a pilot project shall be deducted from the public aid granted to the operation*" (**Annex 30**). But, as demonstrated above, electric fishing was purely developed for commercial purposes. It therefore becomes crucially important to investigate whether subsidies perceived have been reimbursed or deducted from the profits generated during fishing operations.

From the numerous elements developed in this document, we have strong suspicion of potential fraud and thus formally request OLAF to investigate the case we bring to its attention. Full light must be shed on the unlawful use of European monies and the potentially associated misconduct of public staff.

Respectfully yours,

List of signatories

Claire Nouvian, Chair and Founder of BLOOM
Charles Clover, Executive Director of the Blue Marine Foundation
Alasdair Harris, Executive Director of Blue Ventures
Howard Wood OBE, Chairman and Co-Founder of Community of Arran Seabed Trust (COAST)
Valérie Cabanes, Spokesperson of End Ecocide on Earth
Pádraic Fogerty, Campaign officer of the Irish Wildlife Trust
Antonio García Allut, Chair of Fundación Lonxanet
Marie Toussaint, Chair of Notre affaire à tous
Nick Underdown, Spokesperson of Open Seas
Valeska Diemel, Germany Director of The Black Fish
Jeremy Percy, Director of the Low Impact Fishers of Europe (LIFE) platform
Charles Millar, Executive Director of the Sustainable Inshore Fisheries Trust (SIFT)
Nils Höglund, Fisheries Policy Officer of the Coalition Clean Baltic
Stéphane Pinto, Representative of gillnetters of the “Hauts de France”
Antonis Petrou, Member of the Board of Directors of the Pan Cypriot Association of Professional Fishermen
James White, Fishermen United
Jerry Early, Chair of the Irish Islands Marine Resource Organisation (IIMRO)
Daryl Godbold, Leigh and Southend fishermen

Tom Brown, Thanet fishermen / Queenbourgh fishermen
Paul Lines, Lowestoft Fish Market Alliance
Andrew Craig, Mersea Island Fishermen
Ken Kawahara, Spokesperson of the Plateforme de la Petite Pêche Artisanale
Wolfgang Albrecht, First Chairman of the Fischereischutzverband Schleswig-Holstein
Ger de Ruiter, Director of C-LIFE
Søren Jacobsen, Chair of Skånsomt kystfiskeri (FSK)

Additional information

Despite the non-compliance of the Dutch Government with the EU transparency requirements regarding the publication of financial data provided to the fishing sector, there is evidence that Dutch electric vessels and research institutes were granted substantial amounts of undue public subsidies:

1. The European Fisheries Fund (EFF)

Articles 51 and 59 of Regulation (EC) No 1198/2006 set forth transparency requirements with regards to the beneficiaries of the EFF (**Annex 31**), which operated between 2007 and 2013 but was extended until 2016 by several Member States, including the Netherlands. Despite this legal obligation for each Member State to publish a finalized list of EFF beneficiaries on a dedicated website, the Netherlands has not complied with the law and has failed to make such a list available.

The absence of transparency of the Netherlands makes it impossible to quantify the amounts attributed to electric fishing through EFF subsidies. However, solid evidence indicates that the development of electric fishing in the Netherlands has benefited from significant subsidies under the EFF.

- *Acknowledgment of EFF funding in the literature (non-exhaustive list)*

  - Taal *et al.* (2014) Samenwerken aan een duurzame visserij in de Voordelta. LEI Wageningen UR.
  → On page 3: "*Het onderzoek is mede gefinancierd door het Europees Visserijfonds (EVF) binnen hetkader'Investering induurzame visserij'*" (**Annex 32**);
  - Baarssen *et al.* (2015) Verkenning Economische Impact Aanlandplicht Op Nederlandse Kottervloot.
  → On page 3: "*Dit project is geselecteerd inhet kader van het Nederlands OperationeelProgramma "Perspectief voor een duurzamevisserij" dat wordt mede gefinancierd uit hetEuropees Visserij Fonds (EVF)*" (**Annex 33**);
  - Turenhout *et al.* (2015) Energiebesparing En Rendementsverbeteringen Aan Boord van TX 36 (2.000 Pk-Kotter). LEI Wageningen UR.
  → On page 3: "*Hetonderzoek is medegefinancierd door het Europees Visserijfonds (EVF) binnen het kader:Investeringin duurzamevisserij*" (**Annex 34**);

Furthermore, in his MSc thesis published in 2015, Tim Haasnoot notes that: "*After 2003, the European Fisheries Fund (EFF) became a much more prominent tool from Brussels. Eventually, the budget at the fisheries department at the Ministry had grown to 140 million euros*". The author quotes an employee of the Dutch Ministry of Economic Affairs that he interviewed: "*That money had to be invested over a longer period of time, so then we started to make strategic plans, an innovation plan for the duration of seven years*", explaining that this "*meant that structural investments could be done in alternative fishing techniques, like the pulse trawl technique*". For example, the author later explains that "*a group of 15 fishing companies received a subsidy of a total of 420 000 euros for the further development of the electric pulse cables from the Ministry of Economic Affairs*" (**Annex 35**).

- *Acknowledgment of EFF funding on fishing companies' websites and in the professional press (non-exhaustive list)*

Dutch company Cornelis Vrolijk — which claims that "*the beam trawling lines have been replaced on all [their] vessels with the newly-developed pulse-fishing lines*" (**Annex 36**) — also acknowledges having received EFF funds to conduct research: "*this study was carried out on behalf of Jaczon BV [...]. The study was [...] co-financed by the European Fisheries Fund (EFF) as part of its Investing in Sustainable Fisheries programme*" (**Annex 37**).

A press article from Visserijnieuws dated 11 October 2014 also mentions that the owner of the ship WR-109 received a subsidy of 103 305 euros for an innovation project related to electric fishing (**Annex 38**).

- *Aggregated data published by the Organisation for Economic Co-operation and Development (OECD)*

In its 'Fisheries Support Estimate' database (www.oecd.org/agriculture/fse.htm), the OECD reports that 45 million euros of EEF monies were allocated to Axis 3, i.e. "*Innovation and better cooperation within the fisheries chain*" (**Annex 39**). Given that 'innovation' is synonymous of 'electric fishing' in all communications from the European Commission and electric fishing industry concerning this axis, we believe that a large part of that amount was indeed allocated to electric fishing.

2. European Maritime and Fisheries Fund (EMFF)

The EMFF was initiated in 2014 and — unlike for the EFF — the list of Dutch beneficiaries is publicly available on the Ministry of Economic Affairs' website.[2] The analysis of this file revealed that 5.7 million euros, of which 3.8 million euros correspond to the EU contribution, have been allocated to the development of electric fishing since August 1st 2015 (**Annex 40**).

[2] The Dutch EMFF file is available at: www.rvo.nl/sites/default/files/2017/05/20170430_Openbaarmaking_EFMZV_2_v1.csv.

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Annex 2: Regulation (EC) No 41/2007.
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Annex 4: STECF (2006) 23rd report of the Scientific, Technical and Economic Committee for Fisheries (second plenary meeting).
Annex 5: EU vessel registry as of 1 January 2007.
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Annex 11: Regulation (EU) 227/2013.
Annex 12: Regulation (EU) 1380/2013.
Annex 13: ICES (2009) 1.5.6.3. — Answer to The Netherlands' request on electric pulse trawl. ICES Advice 2009, Book 1.
Annex 14: STECF (2012) 39th plenary meeting report of the Scientific, Technical and Economic Committee for Fisheries.
Annex 15: Nederland riep het verbod op pulsvissen over zichzelf af. Published in NOS on 25 March 2018.
Annex 16: Pulsvissen: lopend onderzoek genegeerd. Published in BioNieuws on 27 January 2018.
Annex 17: Brussel eist uitleg van Nederland over pulsvisonderzoek. Published in NOS on 27 March 2018.
Annex 18: schouten: brussel gaf zelf toestemming voor vergunningen pulsvisserij. Published on 27 +arch 2018.
Annex 19: ICES (2015) Second interim report of the working group on electrical trawling (WGELECTRA). IJmuiden, the Netherlands, 10-12 November 2015 Copenhagen (Denmark).
Annex 20: ICES (2013) Report of the Study Group on Electrical Trawling (SGELECTRA). ICES CM 2013/SSGESST:13, International Council for the Exploration of the Sea (ICES), Copenhagen (Denmark).
Annex 21: Un chalutier hollandais suspecté de fraude arraisonné au large. Published in *La Voix du Nord* on 16 February 2017.
Annex 22: Un nouveau chalutier néerlandais arraisonné pour pêche illégale. Published in *La Voix du Nord* on 14 March 2018.
Annex 23: Dutch firm and master fined with GBP 168,000 due to fisheries breaches. Published in *FIS* on 13 June 2017.
Annex 24: Parliamentary questions — 10 September 2007 — Answer given by Mr Borg on behalf of the Commission. E-4018/2007.
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