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COMMISSION STAFF WORKING DOCUMENT

EVALUATION

Accompanying the document

Recommendation for a Council Decision

authorising the opening of negotiations on behalf of the European Union for the conclusion of a protocol to the Sustainable Fisheries Partnership Agreement with the Government of Cook Islands

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1. INTRODUCTION

Purpose and scope

Bilateral sustainable fisheries partnership agreements (hereafter - SFPAs) between the EU and third countries are covered by the Common Fisheries Policy (CFP) Regulation.¹ SFPAs help to implement the CFP objectives internationally, ensuring that fishing activities of the EU fleet outside Union waters are based on the same principles and standards as those applied in EU waters. SFPAs are based on the principles of sustainability and best available scientific advice, transparency, non-discrimination, solidarity through partnership. All in all, SFPAs contribute to the establishment of a governance framework for external fishing activities.² Furthermore, the EU commitment to promote oceans governance at a global level³ should be incorporated in newly negotiated SFPAs.

The Council Conclusions on the external dimension of the Common Fisheries Policy adopted on 19 March 2012, calls for an ex-post and ex-ante evaluation to be carried out by the Commission before negotiating a new protocol.⁴ The need for an ex-ante and ex-post evaluation with an aim to inform decision-makers, before the negotiation directives by the Council are adopted is also confirmed in Article 31(10) of the CFP Regulation.

This staff working document (SWD) presents the results of an ex-post and ex-ante evaluation of the Sustainable Fisheries Partnership Agreement between the EU and the Cook Islands (2016 – 2020). This evaluation covers the period from the provisional application of the Protocol on 14 October 2016 to March 2020. The ex-post evaluation is made on the basis of assessment criteria: effectiveness, efficiency, economy, coherence, relevance, EU added value and acceptability. The ex-ante analysis focuses on the identification of the main problems and needs, the objectives expected to be achieved, available options (renewal or non-renewal of the Agreement /Protocol, modified and improved Agreement/Protocol) and their impacts together with the associated risks. The analysis also explains the possible benefits of a new Protocol as well as its added value for the EU.

2. BACKGROUND TO THE INTERVENTION

Description of the intervention and its objectives

To explain the logic of this intervention, it is important to explain the rationale of SFPAs. SFPAs consist of three major parts: Agreements, Protocol and Technical Annexes. While once negotiated SFPA Agreements are automatically extended, the Protocols have to be renegotiated before their expiry. SFPAs are rendered operational through implementation Protocols that contain Technical Annexes. It is for this reason that the evaluation is needed (as explained in the introduction), in order to decide whether it is beneficial or not renewing the Protocol and, if so, under which conditions.

EU concludes fisheries partnership agreements with third countries to enable the EU fleet to fish surplus resources in the exclusive economic zone (EEZ) of partner countries (in

1 Regulation (EU) 1380/2013 of 11 December 2013 the Common Fisheries Policy (OJ L354, 28.12.2013, p. 22).

2 Overview of SFPA: http://ec.europa.eu/fisheries/cfp/international/agreements_fr.

3 Joint communication: International ocean governance agenda for the future of our oceans (JOIN(2016) 49).

4 Doc. 7086/12 PECHE 66.

this case – the Cook Islands), in a legally regulated environment and in exchange for a financial contribution by the EU and ship-owners. The EU contribution is made up of two separate components: 1) EU access contribution that gives access for the EU fleet to waters and fisheries resources of a partner country; and 2) EU sectorial support devoted to development of the fisheries sector in partner countries. The EU public contribution is complemented by contributions paid by EU ship-owners.

Each SFPA is an exclusive agreement: once in place, EU vessels can only fish under this SFPA, and cannot enter into private agreements with the partner country. The SFPA ensures a level-playing field and establishes minimum standards for sustainable resource management as it includes provisions prohibiting the granting of conditions that are more favourable to other foreign fleets. The implementation of the Agreement and its Protocol is managed by a Joint Committee, which meets at least once per year, composed of representatives of both parties.

The first fisheries agreement between the EU and the Cook Islands was negotiated in 2015, was provisionally applied since 14 October 2016, and entered into force on 10 May 2017. This agreement shall apply for eight years from the date of the start of its provisional application. It shall be tacitly renewed for additional periods of eight years, unless notice of termination is given. The EU concluded the Agreement by Council Decision (EU) No 2017/418 of 28 February 2017.

Under the current Protocol of four years (14 October 2016 till 13 October 2020), the EU fleet is allowed to fish in the Cook Islands' fishery areas for highly migratory species as listed in Annex 1 of the 1982 United Nations Convention on the Law of the Sea. Indicative annual fishing opportunities total 7 000 tonnes. The Protocol provides for EUR 385 000 for the first and second year, and of EUR 350 000 for the third and fourth year, from the EU budget as financial compensation for access. In addition, EU ship-owners pay authorisation fees based on prices set in the Protocol for the quota allocated. EUR 350 000 per year are also provided from the EU budget to support the Cook Islands sectoral fisheries policy.

The negotiation of the new Protocol will imply the re-evaluation of various components of the protocol, such as indicative annual fishing opportunities, quotas agreed, financial compensation based on prices (EU and ship-owners), electronic catch reporting. As far as strengthening the Cook Islands' capacities on the sustainable management of the fisheries policy, it is important that the sectoral support continues to focus on: (i) enhancing the livelihoods of artisanal fishermen, (ii) reinforcing monitoring, control and surveillance capabilities, (iii) strengthening the food safety authority and (iv) enhancing the capacity of Cook Islands' Ministry of Marine Resources fishery administration to implement sustainable fishery policies. In this light, the sectorial support contribution paid by the EU could also be reassessed.

Important to note, that bilateral cooperation between EU and the Cook Islands should be looked in a larger context in the framework of regional cooperation. To do so DG MARE works in close cooperation with other Commission services, such as DEVCO, and with the EEAS in order to ensure coherence in actions.

3. IMPLEMENTATION/STATE OF PLAY

As regards the implementation of the Protocol, a number of areas are identified in order to reflect what the situation was like before the intervention started, and how it was expected to develop and other relevant points of comparison.

Utilisation of fishing opportunities. Utilisation of fishing opportunities in terms of number of vessels has been moderate (50%) throughout the period subject to this evaluation. The reference tonnage is set at 7 000 tonnes of highly migratory species.

EU purse seiners currently active in the Pacific Ocean are all flagged to Spain. There are only two EU purse seiners active in the Pacific Ocean. There were four purse seiners active in the Pacific Ocean, but 2 of them moved to the Indian Ocean as from September 2015, when the Fisheries Protocol with Kiribati expired. The relatively low rate of utilisation of fishing opportunities since Protocol application can be explained by the departure of the above mentioned two EU purse seiners, because they accounted for most of the fishing capacity of the Western-Central Pacific Ocean EU purse seine fleet.

According to data available, the two EU purse seiners spent 29 days fishing in the Cook Islands' EEZ in 2017, and 52 days in 2018. The average catch per day was 23 tonnes in 2017, and 42.5 tonnes in 2018. For the EU purse seine fleet, which includes relatively modern fishing vessels, an average catch of 40-45 tonnes per day is an expected baseline. 2018 catches per day are aligned with this baseline. For 2017, catches per day are significantly below this baseline, suggesting poor fishing efficiency in the Cook Islands EEZ attributable to the learning curve the EU operators had to undergo to locate and catch tuna in the zone. Provisional catch data available for 2019⁵ seems to confirm this increasing trend.

Economic analysis. Based on catches obtained as a result of fishing opportunities available and average first sale prices of the different tuna species caught, the turnover of EU purse seiners under the current Protocol is approximately EUR 1.8 million per year on average over the 2017 - 2018 period, varying between EUR 1 million in 2017 and EUR 2.6 million in 2018. **Direct Gross Value Added (GVA)** estimates take into account operating expenses borne by EU tuna vessels to prosecute their activities. It reflects the economic wealth generated by the EU fishing activities. From estimates based on the operating accounts of EU tuna purse seiners benefiting from fishing opportunities in the Cook Islands' EEZ, **the GVA** generated by EU tuna vessels has been close to EUR 730 000 on average over 2017 and 2018, varying between EUR 500 000 in 2017 and EUR 956 000 in 2018. **Gross Profit (GRP)** is calculated by subtracting costs of labour (i.e. wages paid), access fees paid by EU ship-owners under Protocol conditions, and other taxes, from GVA. GRP provides a preliminary indicator of EU fleet profitability. However, GRP does not represent the net profit of fishing companies concerned since it is also used to remunerate the capital invested (depreciation, dividends) and to pay taxes to which fishing companies are liable in their countries of origin (corporate taxes, etc.). According to the study, **the EU fleet GRP** has been positive on average over the two years, with an average of EUR 157 000 over the period.

Employment analysis. Concerning **direct employment**, the number of full-time equivalent (FTE) jobs on the two EU tuna purse seiners concerned by the Protocol is slightly in excess of 78 for activities in the entire Pacific Ocean. Estimates of **indirect**

⁵ Provisional catch data for 2019 : 2933 t; for 2018 it was 2098 t.

employment indicate that almost 32 FTEs are supported by the Protocol in upstream and downstream ancillary industries, with a large majority of them (90%) in the downstream sector (tuna processing). For Cook Islands, the Protocol does not support indirect employment in the absence of significant economic interactions⁶ between EU purse seiners and economic entities registered in the Cook Islands.

Sectorial support. The sectoral policy support contributing directly to the government expenditure is broken down into four main areas: (i) enhancing the livelihoods of artisanal fishermen (38%), (ii) reinforcing monitoring, control and surveillance capabilities (12%), (iii) strengthening the food safety authority (24%) and (iv) enhancing the capacity of Cook Islands' Ministry of Marine Resources fishery administration to implement sustainable fishery policies (26%). **The Cook Islands have been successful in implementing the sectoral support.** It includes, among others, the refurbishment of and equipment for the Cook Islands' Fisheries Monitoring Centre and Water Quality/Chemistry laboratory, implementation of a support scheme for artisanal fishers, provision of safety equipment for artisanal fishers and strengthening the Cook Islands observer programme. While visibility of EU support is ensured for some concrete realisations, there is still a need to raise awareness of the wider Cook Islands population on the infrastructure contributions and other benefits of the sectoral support.

4. METHOD

Short description of methodology

The evaluation was supported by a study that was carried out by an external consultant. The evaluation study was conducted between December 2019 and March 2020, under the guidance of an inter-service group (ISG) and in the framework of the terms of reference. The methodology included analysis of available documentation and data, and consultation of Cook Islands and EU stakeholders (see Annex 2). The evaluation report was prepared in line with EU guidelines (including the 'evaluation toolbox'), in particular on how to assess impacts on other countries, and methodological elements specific to the external dimension of the CFP (e.g. methods for assessing the socio-economic benefits of fisheries agreements).

Limitations and robustness of findings

The findings of the study are robust and reliable. The methodology for this evaluation included a review of literature and data, and consultations (some face to face, and some remotely) with stakeholders in Cook Islands and in the EU. In addition, secondary sources analysis and literature review complemented data from interviews.

⁶ The port of Avatiu in Rarotonga does not have the dock space/installations nor harbour area for real transshipment activity for eventual frozen container export. EU operators acknowledged the lack of interactions with Cook Islands territory underpinned by the inadaptation of the port of Rarotonga for large scale tuna vessels, and the lack of qualified personnel (e.g. refrigeration specialists, stevedorers) to handle unloading of catches. No purse seiners use Cook Islands ports for their landing / transshipment operations. In the absence of economic interactions between the EU purse seiners and economic entities registered in the Cook Islands through port calls in Cook Islands, sales of tuna to local industries or employment of local workforce, indirect GVA accruing to Cook Islands is nil. The only value-added components benefiting to Cook Islands are access fees paid by EU ship-owners and the compensation for access and sectoral support paid by the EU.

5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS

The Protocol between the EU and the Cook Islands generally meets the conditions of effectiveness, efficiency, economy relevance, coherence, acceptability and the EU added value. The current Protocol can be broadly described as win-win deal for both parties, for the Cook Islands on one side and the EU and ship-owners on the other.

Effectiveness. The ex-post evaluation of the current shows that the SFPA succeeded in achieving its main objectives. *The fishing opportunities negotiated for the EU fleet in Cook Islands' EEZ are aligned with limits imposed in the regional context* and do not generate specific threats to tuna stocks nor on marine ecosystems. *The activities of the EU tuna fleet in Cook Islands' EEZ are monitored through the reporting requirements set out in the Protocol*, in conformity with both standards of the CFP and the relevant Pacific Regional Fishery Management Organization, the Western and Central Pacific Fisheries Commission (WCPFC), which include in particular an obligatory 100% observer coverage. Unilateral measures implemented by EU operators through their Fisheries Improvement Plan produced interesting results in terms of promotion of Electronic Monitoring System (i.e. shared video records of fishing operations taken by a network of cameras installed in different locations of the vessel) of fishing activities) that Cook Island is now considering to expand to other foreign fleets accessing its EEZ.

Concerning the Protocol objective of protecting the interests of the EU long distance fleet, the evaluation reveals that the Protocol effectiveness is good overall. The SFPA provides fishing opportunities in waters from which the EU purse seine fleet obtains on average 13% of its catches in the Western Central Pacific Ocean in 2017 and 2018, and which are utilised by 100% of EU purse seiners active in the West-Central Pacific Ocean. *However, the overall effectiveness of the Protocol is undermined by EU catches below the reference tonnage* and the utilization of fishing opportunities by only two of a total of four purse seiners which could be authorised. *The Protocol has not been effective in promoting economic interactions between fisheries sectors of the two parties*, but this objective was clearly out of context for consideration of the Protocol, given the structural situation of Cook Islands.

Sectoral support funding provided by the EU is effective in contributing to overall government budget and expenditure on fisheries administration, control and enforcement, artisanal fisheries and the food safety authority.

Efficiency. The evaluation indicates that the Protocol is not fully efficient. The fishing opportunities negotiated have not been fully utilised, for the reasons explained above, with catches remaining below the reference tonnage fixed by the Protocol to establish the level of EU financial compensation. Compared to other SFPAs concluded by the EU with Coastal States for access to highly migratory species, the cost of fishing opportunities in Cook Islands waters is relatively high, but less than the minimum access fee paid by other foreign operators. The SFPA Protocol generated a positive return on investment with EUR 4.34 value-added multiplier for every EUR 1 invested in access from the EU budget on average between 2017 and 2018.

Economy. EU sectoral support matches well with the Cook Islands' needs and is fully absorbed, and the EU has disbursed access payments and financial contributions for sectoral support in a timely manner consistent with the Protocol.

Relevance. The Protocol is relevant to address the needs of the EU in terms of promotion of sustainable fishing practices in external waters, the needs of EU purse seine operators in terms of access to productive fishing grounds, and the need of Cook Islands in relation to technical and financial partnership for implementation of the national fisheries policy.

For the EU party, relevance of the Protocol is critical, considering that the SFPA with Cook Islands is the only active SFPA in the region⁷ since 2016.

Coherence. The SFPA Protocol is coherent with the current CFP in general and with the overarching WCPFC conservation and management regime. According to this evaluation, the basis of the access arrangements for the EU fleet negotiated between the two parties under the Protocol are compatible with the international commitments of Cook Islands for managing fishing effort in its waters, and EU fleet for fully complying with applicable measure while in the Cook Islands' EEZ. The sectoral support component of the agreement is utilised to address strategic actions for which funding may be lacking at national level, in coherence with other EU regional interventions in the region, in particular under the EDF regional indicative programmes for the Pacific Region

The EU added value. There is a strongly positive EU added-value through SFPA mechanisms for access and for sectoral support. Compared to any other mechanism for gaining fisheries access for EU vessels in the purse seine segment, the Agreement has delivered a wide range of valuable benefits to both the EU and Cook Islands parties, in terms of sustainability and national development.

Acceptability. EU purse seine operators are satisfied with the conditions set up by the Protocol and support its renewal. However, they would like to see an improved efficiency of the observer programme while fishing in the Cook Islands' EEZ.

Ex-ante evaluation

The ex-ante evaluation of a possible future protocol to the EU/Cook Islands SFPA, outlines the key needs to be met by both Cook Islands and the EU.

Shared needs of both parties are:

- sustainable resource exploitation, and
- a fair sharing of benefits between the two parties.

It describes and assesses two possible options.

- a) The renewal of the Protocol implementing the SFPA concluded between the EU and Cook Islands for an extended multiannual period (status quo), or
- b) The non-renewal of the Protocol.

In reviewing the results of the two options, the evaluation finds that option b) could result in very significant negative impacts for both parties in terms of reduced financial and social benefits, weakened the EU position within WCPFC as flag State, in particular with regard to cooperation on scientific research and governance to promote resource sustainability, and control and surveillance of fishing activities. It concludes that option a) would better meet evaluation criteria.

The conclusion of a new Protocol will create a binding instrument covering both the conditions of access of EU vessels to the Cook Islands' EEZ and the conditions for implementation, with sectoral political dialogue for associated funding.

While most of the modalities of the current Protocol are in line with the principles of the CFP (management measures aligned with conservation and management measures

⁷ Negotiations with Kiribati are currently on hold, pending the current status of "IUU-yellow card" of this country. They could resume as soon as Kiribati demonstrate significant progress in the implementing measures defined in the action plan agreed with the EU.

adopted by WCPFC, non-discriminatory access modalities, deployment of decoupled sectoral support for the access component), a new Protocol should, as far as possible and depending on negotiations, consider appropriate adjustments to seek a better alignment between the financial compensation for access and fishing opportunities exploited by EU purse seine vessels.

Furthermore, the renewal of the SFPAs with Cook Islands could contribute to the reactivation of other SFPAs concluded with other Coastal States of the Western-Central Pacific Ocean (e.g. Kiribati, Solomon Islands, Federated States of Micronesia), thus promoting, inter alia, a level playing field for tuna fisheries in the region.

6. CONCLUSIONS

Therefore, from the two options considered, **the renewal** of the Protocol at the end of its implementation period (13 October 2020) **clearly appears as the preferred option**. The option of not renewing the Protocol would not bring the same benefits.

Such a non-renewal would deprive the EU of an instrument capable of responding to the needs of the various stakeholders, and to its own needs in terms of strengthening the global governance of the oceans in the Western and Central Pacific Ocean through the WCPFC multilateral framework.

For Cook Islands the EU intervention adds value in terms of a multiannual certainty of budget income, an official platform for sectoral dialogue and direct exchanges with the EU, in terms of cooperation and a framework for joint monitoring and control of EU activities. The SFPAs contribute to the promotion of responsible fishing practices, and gives access to a dedicated budget line (sectoral support) for financial support to implementation of national fisheries policy by Cook Islands. In particular, the sectoral support component provides additional multiannual funding not available from national budgets or from other development partners. This envelope supports the implementation of the Ministry of Marine Resources strategic plan designed to achieve the defined national development goals in relation to the fisheries sector.

As far as possible, the next Protocol will have to address some shortcomings identified through the ex-post evaluation. The most challenging part will be to establish a balance between Protocol fishing opportunities and actual demand by EU purse seiners, noting that an increase of EU purse seine fleet in the Western and Central Pacific Ocean is a real possibility, given tuna stock conditions in other Oceans and likely increased attractiveness of the area in the event a new Protocol is concluded with Kiribati. The reference tonnage will be reviewed, to seek a better balance that would ensure improved performance under the next Protocol in terms of effectiveness and efficiency.

Technical clauses of the Protocol could still be slightly modified, but it is of note that current technical clauses are well accepted and complied with. The result of the evaluation and lessons learned from other similar interventions lead to the adoption of recommendations with a view to addressing issues that need to be considered and resolved in the future Protocol.

The general objectives of an EU intervention will have to ensure that i) resource conservation and environmental sustainability is ensured through rational use of marine resources available in Cook Islands' EEZ, ii) protection is provided for the viability of the EU fishing fleet operating in the Western and Central Pacific Ocean, and iii) a sustainable fisheries sector is developed in Cook Islands along the lines promoted by the

national development strategy and in full compliance with Cook Islands international obligations as both a flag and coastal State.

The arrangements with regards to **financial compensation for access** could be reviewed, with reference prices potentially reviewed, with provision for their amendment mid-way through a new Protocol, and with access fees paid by vessel owners also potentially reviewed, in the light of the recently negotiated agreements and protocols.

The **benefits of the sectoral support** in the Cook Islands should be made more visible and be more widely communicated to Cook Islands' civil society. The Cook Islands is fully aware that increased communication will improve acceptability of the EU – Cook Islands SFPAs, which is pivotal in the perspective of the renewal of the Protocol.

To sum up, the Commission supports the conclusions of the assessment made by the contractor. The duration of a future Protocol should be at least four years (like the current Protocol).

ANNEX 1: PROCEDURAL INFORMATION

1. LEAD DG, DeCIDE PLANNING/CWP REFERENCES

Responsible DG: DG MARE – Maritime Affairs and Fisheries

Decide Planning reference: PLAN/2019/5767 - Evaluation of the protocol to the Fisheries Partnership Agreement with Cook Islands

2. ORGANISATION AND TIMING

An inter-service group (ISG), included DG MARE, DG for International Cooperation and Development (DEVCO), the Secretariat-General (SG) and European External Action Service (EAAS), was established to steer the preparation of this evaluation. The evaluation was carried out between October 2019 and March 2020.

The evaluation was also supported by a study carried out by an external consultant between the same time period.

Tasks	Time
Signature of the contract	01.10.2019
Kick-off meeting	10.10.2019
Report of the Kick-off meeting	29.10.2019
Submission of the draft final report	09.12.2019
Meeting to discuss draft final report	18.12.2019
Comments to the draft final report	Written exchange with the steering group
Submission of the final report	12.03.2020

3. EXCEPTIONS TO THE BETTER REGULATION GUIDELINES

The legal and procedural requirements for the preparation of the renewal of fisheries protocols lead to a tight schedule, which prevents the holding of an open public consultation. Moreover, the impact of SFPA is relatively limited, as they focus on a small number of stakeholders. The consultation strategy excludes open public consultations.

4. CONSULTATION OF THE RSB (IF APPLICABLE)

Not applicable.

5. EVIDENCE, SOURCES AND QUALITY

The evaluation is based on the study of “Sustainable Fisheries Partnership Agreement (SFPA) and protocol with Cook Islands Ex-post and ex-ante evaluation of the protocol to the Fisheries Partnership Agreement (FPA) with Cook Islands” that was carried out by a consultant.

Additional information sources for this evaluation were used through scientific advice reviews, Joint Committee meetings minutes, bilateral/multilateral

discussions/consultations with Member States and civil society organisations, including the LDAC.

Last but not least, the evaluation process and the final evaluation report was subject to a quality assessment by the inter-service steering group.

ANNEX 2: STAKEHOLDER CONSULTATION

In line with its guidelines and the ‘better regulation toolbox’, the Commission presented a strategy for consultation when preparing negotiations for the renewal of FPA protocols. The strategy involves determining the best means of consulting relevant stakeholders in the EU and the partner country concerned.

Objectives

The aim of the consultation is:

- to gather stakeholders’ views on the implementation of the previous/ongoing protocol and its possible renewal, including the various options; and
- to feed into the evaluation report (a Commission working document to be prepared before the opening of negotiations on the basis of an evaluation study by an external contractor).

Approach to consultation

The main stakeholders concerned with the protocol, are:

- owners of vessels flying Member States’ flags and benefiting from the protocol; representatives or associations of ship-owners benefiting from the protocol;
- NGOs;
- the Cook Islands authorities;
- representatives of the Member States’ authorities; and
- the private sector and civil society.

Detailed results of the stakeholder consultation

These results are presented in Annex 3 of the evaluation study.⁸

⁸ Ex-post and ex-ante evaluation study of the Protocol to the Agreement on a Sustainable Fisheries Partnership Agreement between the European Union and Cook Islands, March 2020.