

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: 3/10/2018 – Open meeting with stakeholders

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, full 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); BirdLife Netherlands; Dutch Union of Poultry Farmers; Society for preservation of nature monuments in the Netherlands; Royal Dutch Hunting Association; the State Forestry Service and the Port of Rotterdam.

The full list of participants is enclosed in Annex I.

After introductory words from representatives of the Province of Fryslân, LNV and the European Commission, participants were invited to take the floor and present their views on any subject they felt was relevant to the implementation of the Birds and Habitats Directives. These discussions are summarised below.

BirdLife Netherlands (Vogelbescherming, hereafter BL) -

Dutch nature NGO's recently prepared a scorecard on NL Natura 2000, which pointed to several positives, in particular the transposition of the Birds- and Habitats Directives (hereafter BHDs), management planning for the terrestrial network and Article 6 implementation. Nonetheless, their overall assessment is negative as the status of many species and habitats is not improving, and conservation objectives not met at national nor at site level in many cases. This is reflected in the updated Red List for Dutch breeding birds (2017) which totals 87 species (44% of total), with 9 new species, which are mostly previously common farmland birds. Of particular concern is the Black-tailed Godwit (*Limosa limosa*), as NL has a particular international responsibility for the species, yet it is in rapid decline. Despite this apparent lack of progress on nature conservation, and the government's claims to be the greenest ever, BL consider that no sense of urgency is being shown by the NL environmental authorities, which they consider are mainly preoccupied with climate change



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

mitigation. Moreover BL pointed out that NL nature conservation, including management and restoration measures, are primarily targeted to avoid further degradation rather than actual recovery. BL raised the following two specific issues of concern.

- Meadow bird conservation: BL pointed to the declining conservation status of a range of meadow birds, and expressed its concern that despite a formal complaint on NL meadow bird conservation it has brought to the European Commission two years ago, it has not led to noticeable improvements from business as usual. The NL does not have a national meadow bird strategy/action plan for meadow birds and the Provinces take different approaches, several of which are insufficient. The revised system of agri-environment and additional budget for meadow bird conservation foreseen under it, are very welcome but are still on a voluntary basis and the measures are not expected to deliver results at an adequate pace, scale and level of effectiveness. BL observes an insufficient sense of political urgency among Provinces to take additional measures where needed.
- Natura 2000 in large water bodies (marine and freshwater): BL welcomed progress made in the designation of the marine network, but pointed out that the network is still incomplete. The most important omission is the Brown Ridge (Bruine Bank, a critical winter feeding ground for seabirds), which the LNV and Commission agreed should be designated, but no progress has been made since. BL also asked for a more thorough assessment on the need for other sites to be designated, as BL has evidence that suggests they should. Moreover, BL sees a lack of progress on implementation of marine management plans. For adopted management plans, the implementation of conservation measures is not progressing according to plan (e.g. the lack of timely and effective compensation measures for Tweede Maasvlakte before impacts occurred, and the absence of additional measures to correct this in the updated management plan). Another specific case raised by BL was the Western Scheldt, where recent trends show further declines in bird species and the implemented/foreseen compensation measures are expected to be insufficient to avoid deterioration. While many existing threats are not decreasing (overfishing, disturbance), new threats are on the increase, in particular large-scale wind development both in the North Sea as well as IJssel Lake. BL asked for proactive conservation measures for bird species that are particularly impacted, not only in SPAs but also elsewhere on migration routes and important feeding areas.

The issue on wind energy triggered a question by I&W to the Commission on how to strike the right balance between the transition to more renewable energy production and more resilient ecosystems. The Commission answered that the new EU renewable energy policy framework will provide more flexibility to Member States to meet targets based on national possibilities, and will not prescribe which sources of renewables need to be invested in. But Member States will need to improve their strategic planning, for example in hydropower, to aim for maximum energy and minimum impact approaches through avoidance wherever possible, and compensation measures where this is not possible. LNV explained it intends to develop a better set of milestones with Provinces on how to meet the remaining implementation challenge on the implementation of the Dutch Nature Pact (which


includes Natura 2000 implementation) sustainably in coherence with other strategic objectives². This will mainly require more significant efforts in other policy areas and economic sectors.

Dutch Union of Poultry Farmers (Nederlandse Vakbond Pluimveehouders, hereafter KVP³ - 
 - Presentation included in Error! Reference source not found.

The KVP focussed its intervention around the challenge avian influenza (HPAI) poses to the Dutch poultry sector. They are concerned by research that found that high disease levels are in part due to transmission from water birds, as certain wild birds are a reservoir of HPAI. Furthermore, the incidence of HPAI is increasing around the world, and the problem is unlikely to be resolved at source (China) soon, and a vaccine is probably many years away. To reduce the risk of contamination due to the concentration of poultry farms in one area, as well as to reduce environmental impacts such as from nitrogen emissions, many poultry farms relocated away from elevated/sandy soils in the south and east to lower laying clay/and peatlands in the west and north of the country. However, this increased the proportion of farms located close to high concentrations of water birds, which they consider has led to new disease outbreaks, and as a result some relocated farms have filed for bankruptcy. The problem is exacerbated by the increasing public and political wish for free-range poultry and eggs, as keeping poultry outdoors increases exposure risks. The core of the argument to NL AUT is therefore not to create new wetland areas close to poultry farms.

IPO responded that every proposal for the creation or restoration of wetlands is open to public consultation. In addition, every year stakeholders have the opportunity to raise complaints concerning sites in the Netherlands Nature Network (NNN). If no solutions can be found, the NNN designation is flexible. For Natura 2000 sites this is more complicated (as the boundaries cannot be changed for economic reasons), however farms have been relocated a lot in the past as part of spatial planning exercises and this is still possible. Another tool Provinces have to reduce risks of infection from wild bird close to farms is the use of fauna management plans.

The Commission responded that the Habitats Directive does not stipulate where wetlands should be recreated, and this should be done on case-to-case basis as part of regional planning. Reducing risks can be part of management planning, but preventive measures in agricultural practices should be the principle solution. However, this may mean free-range production may not be possible in some areas.

Society for preservation of nature monuments in the Netherlands (Natuurmonumenten, hereafter NM)⁴ - 

NM stated that the BHDs as the last legal tool keeping up nature ambition in the Netherlands, and shared the principle concern also expressed by BL that a lack of implementation and integration with other policies and economic activities has resulted in little progress being made towards achieving

² In the 3rd implementation report on the Nature Pact (Derde Voortgangsrappportage Natuur, 2017) IPO reported that according to PBL modelling (Lerende Evaluatie Natuurpact, 2017) there is a 35% remaining challenge towards the Nature Pact goal setting. This modelling is not based on actual FCS of habitats and species, but on the four most influential environmental conditions affecting their status in the Netherlands (nitrogen, acidity, hydrology and spatial).

³ The KVP is not a member organisation of COPA

⁴ Natuurmonumenten is a member of the European Environmental Bureau (EEB)

their objectives. NM cherish the Dutch participatory approach (the 'Polder model') but it also hampers progress on some critical cases where immediate action is required.

NM's main concern is the approach in which NL AUT aim to reduce the impacts of excess diffuse nitrogen emissions in Natura 2000 through the Programmatic Approach to Nitrogen (Programmatiese Aanpak Stikstof, hereafter PAS). According to NM, the NL AUT's own assessments show that at current speed of PAS implementation, 60% of sites will still suffer from exceeded critical deposition levels after the third 6-years PAS management cycle in 2035. Moreover it appears that for 25% of sites it is still unclear how their conservation objectives will be met. This will undermine the 65% target for 2030 in the Nature Pact⁵. Although calculations at farm level show reduced emissions, actual measurement of concentration does not show the same reduction.

IPO responded that the Provinces do what they can on the PAS but recognise that a lot still has to be done. The political commitment is there to take restoration head on, but the pending European Court of Justice (hereafter EJC) ruling complicates matters. They also pointed out that it is a stepwise approach in which restoration will keep on being taken and emissions will keep on going down and ultimately both will be at acceptable levels to reach conservation objectives. The recent finding that increasingly measurements of actual nitrogen concentration levels in the air are showing discrepancies with declining farm emissions is posing an additional challenge to the Provinces. The required changes to measures differs per site, and updates of management plans need to be made on a case by case basis which is time consuming. The representative from Staatsbosbeheer pointed out that in some sites where local governments do not act, time is of the essence. IPO responded that such sites are prioritised in the management planning process, but they recognise that implementation of updated management plans does not always take place and requires follow-up and enforcement at local level.

The Commission raised a question on how the 65% achievement towards target agreed in the Nature Pact is calculated by PBL. LHV clarified it is based on four key factors enabling/restricting environmental conditions for the achievement of national conservation objectives in NL: Nitrogen, acidification, hydrology and spatial distribution [see minutes of meeting with NL AUT on Day 2 afternoon].

Royal Dutch Hunting Association (Koninklijke Nederlandse Jagersvereniging, hereafter KNJV)⁶ – 

The KNJV started off with expressing that, unlike Natuurmonumenten, it generally experiences difficulties in a dialogue with the NL AUT on the implementation of the EU nature directives, so are grateful to the Commission for this opportunity to express their views. They indicated that the Dutch hunters are happy with the BHDs and consider them fit for purpose, something they also propagate through the European Federation for Hunting and Conservation (FACE). The KNJV considers the Commission's guidance documents, including the guidance on hunting under the Birds Directive, to be very helpful but regrets they are not known and used in Dutch policy and law. The KNJV observes 'gold plating' in the implementation of BHDs by NL AUT, and in their view the fair balance between species protection and use of natural resources in BHDs contrasts with the current strict protection

⁵ See footnote 2

⁶ The KNJV is a member of FACE

regime in NL. This has created polarised debates that turn against the Directives themselves, which they consider are 'hated' by most farmers, foresters and hunters; whose support is needed for biodiversity conservation. The KNJV highlighted the following two issues of particular concern.

- Management planning: The KNJV denounced the way in which NL AUT apply Article 6.2 in relation to the potential disturbance impacts for hunting as currently a precautionary approach is taken where any disturbance is considered to have significant detrimental impacts on the achievement of favourable conservation status (FCS). As a consequence, Dutch hunters experience that in and around Natura 2000 sites (sometimes up to 500m) few activities are possible, despite in their view inadequate justification for this; which has created strong opposition to this protection regime.
- Geese management: Geese hunting has been banned for over two decades in the NL, but breeding geese numbers have risen rapidly: Currently over 600,000 pairs of Greylag Goose (*Anser anser*) but also increasingly Great White-fronted Goose (*Anser albifrons*) and Barnacle Goose (*Branta leucopsis*)⁷. In winter NL hosts 2.6 million geese. Geese create a significant challenge to aviation and farming, and the cost of damage by geese is estimated at EUR 65-85 million/year, while only EUR 22 million compensation is paid out. NL AUT kill around 600,000 geese/year through shooting, shaking eggs in the breeding season and gassing adult birds during the moulting season for which NL has granted an Article 9 derogation. In KNJV's view the application of this derogation by NL AUT is unlawful as the hunting of geese in winter is not firstly considered as a means of killing birds to prevent these damages. Dutch hunters see this as unfair, and regret that geese are therefore regarded as a pest rather than a natural resource. KNJV believes wild geese in NL could be sustainably harvested and the current approach fuels polarisation between hunters and nature conservationists.

The Commission responded that it recognises that the guidance documents are not sufficiently known and used; and therefore, to help address this it is making an effort to have them translated. Under the African-Eurasian Migratory Waterbird Agreement (AEWA), a plan is under preparation to support Countries having a coordinated approach in order to prevent damage, including by making use of derogations. The Commission does not share the opinion that NL AUT are contravening the derogation by not considering hunting as an option. The Commission also stated that Member State authorities have the possibility to be flexible on this issue. The Commission invited NL AUT and hunters to have further discussions on possible solutions to the conflicts arising from geese.

When asked by NL AUT on 'gold-plating', the Commission answered that it does not have an indication that NL AUT do so, and, in accordance with the precautionary principle, it is correct to avoid activities which have an impact on protected habitats and species.

IPO responded to the issue of management planning and stated that it did not recognise the KNJV's perception that it is not possible to carry out actions such as hunting in Natura 2000 sites. Instead, the level of restrictions vary depending on the site, and one cannot generalise. KNJV pointed out that the burden of proof is with hunters and that NL has had a general hunting ban, which is therefore not a case-by-case approach; whilst in their view the baseline (i.e. default position) should be that hunting

⁷ And a number of non-native species such as Greater Canada goose (*Branta canadensis canadensis*) with 5200-10.400 pairs in 2012.

should be possible unless there is evidence that it would be detrimental. NL AUT (RWS) countered that this default position was taken in development of management plans, but hunters did not raise their concerns during the participatory process.

BL clarified that based on court decisions, a lot of hunting did not meet Article 6.2 requirements and did have significant effects through disturbance. BL also pointed out that the distinction between resident breeding and migratory populations should be kept in mind, as it is mainly the former that cause damage to farmland and therefore it is right that the control measures are focused on these birds. Furthermore, the control measures can be carried out in spring/summer with little disturbance to other birds. In contrast, hunting wintering birds that create little economic damage is not justified, and disturbs large numbers of birds of a wide variety of species. KNJV responded that both migratory and resident geese are part of the same population and should be managed as such.

Port of Rotterdam (hereafter PoR) – [REDACTED]

The PoR commenced by stating that businesses mainly need certainty on regulatory frameworks, and that the BHDs, their Dutch transposition and EJC jurisprudence has generally provided this certainty. Unfortunately the Commission's guidance documents are little known, which undermines their effectiveness, and their non-legal status has created uncertainty over some issues. Specific challenges raised by the PoR were as follows.

- Double assessment: Companies have sometimes been obliged to do appropriate assessments on specific projects, even if that project was covered by a spatial plan for which an appropriate assessment was done too. For example, Maasvlakte II included an extensive assessment both for its development and the intended use of the area, which resulted in significant compensation requirements. Against the expectation of the PoR, the first company that moved into the site was also required to do a full appropriate assessment and also had to implement compensatory measures. Although some measures have since been taken to reduce this double assessment burden PoR consider that they have not achieved their intended purpose in practice.
- PAS: The agreement on the PAS was welcomed by the PoR, however, the preliminary court decision has now created uncertainty on the issue again. Moreover, they consider that NL AUT are stricter on threshold levels than their DE and BE counterparts, and therefore PoR expressed a hope that the Commission together with NL AUT will work on creating a more level playing field. The Dutch approach is based on a very strict legal interpretation of 'beyond reasonable scientific doubt', but this is especially difficult to ascertain in dynamic and unpredictable coastal system where PoR operates.
- Conservation objectives and Article 6.4 compensation: PoR indicated that they find some conservation objectives are quite inflexible, e.g. number of hectares or number of birds to be reached in particular sites. This can cause problems as these numbers fluctuate due to a range of causes, especially considering that they are often set for single sites rather than a group of sites, which would provide more flexibility for achievement. For this and other reasons, it can be hard to exclude effects of certain activities or prove the effectiveness of compensation measures, such as those for Maasvlakte II. For example, the development of new dune habitat north of the port has been very positive in ecological terms. However, a question remains on

whether the conservation goals in terms of number of ha of dune habitat is met, for example because of natural succession.

- Working with nature/investing in nature: The BHDs and their interpretation, including the judgement of the ECJ of 14 May 2014 regarding compensation and mitigation measures ('Briels Arrest')⁸, are not helpful to companies with a pro-active approach to nature management within development sites. If companies could be supported to work with/invest in nature as part of a project from the start it would lead to a lower administrative burden and more legal certainty. There are concerns that pro-active measures that create suitable conditions for some species can later lead to new designations on their site (e.g. as occurred for a Common Tern colony). This can then become a general disincentive for companies to encourage nature onto, or near, their sites.

The Commission clarified that, as regards appropriate assessments, repeated assessments of the same thing are in nobody's interest. The BHD are not prescriptive on this, and it is therefore up to the Member State to ensure their procedures and requirements are effective and efficient. The key element to consider is whether or not a project being developed in the framework of a plan that was subject to appropriate assessment is still likely to have a significant effect on Natura 2000 sites.

On the PAS, the Commission clarified that in 80% of cases the formal judgement follows the Opinion of the Advocate General, but that it is important to realise that the upcoming ruling is addressed to the Dutch court which will have to consider it for issuing its own judgement. It is therefore too early to say what the consequences of the preliminary ruling will be. The Commission expressed its intention to have a good dialogue on the next steps with NL AUT after the ruling.

The Commission informed that the approval procedures for Commission guidance documents have changed, such that from now on all new guidance documents will be politically endorsed by the College of Commissioners, which will give them increased authority.

The Commission also stated that it encourages companies to continue to work with nature, and follows with great interest cases where this is being advanced (e.g. the 'temporary' nature approach taken in NL and BE). The Commission is currently updating its guidance on species protection and will consider these issues and the lessons that have been learnt from the approaches taken to solving them.

On the issue of Article 6.4 compensation, the Commission clarified that if uncertainties arise over the outcomes of Article 6.4 compensation measure, then AUT/operators must ensure adequate monitoring and rectify shortfalls in compensation if they occur, i.e. implementing additional compensation measures than originally planned (i.e. as a contingency measure)..

NL AUT responded to the issue of the rigidity of conservation objectives and compensation, clarifying that conservation objectives on species have some flexibility, and that their aim is often to provide the habitat for a defined number of a particular species, rather than to ensure reaching an exact number of birds in the site. However, for some habitats the situation is more complicated, and currently discussions are taking place in the ministry on whether setting general goals (e.g. 'increase')

⁸ EJC (2014) ECLI:EU:C:2014:330,
<http://curia.europa.eu/juris/document/document.jsf?docid=152343&doclang=EN>

or more concrete targets. The Commission added that guidance on conservation objectives advises that they should be as concrete as possible, not least to help assess the costs of the measures needed to achieve them and their inclusion in the Prioritised Action Framework (PAF).

BL pointed out that a problem is that NL system aims to achieve FCS objectives by focussing on restoration in a few sites, whilst in others the aim is to maintain the status quo. This is unambitious, and also can cause problems if the restoration actions in the few targeted sites are unsuccessful.