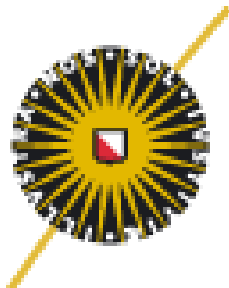


Natura 2000 and fisheries: a question of competence or willingness?

Conference “20 years of Habitats Directive:
European Wildlife’s Best Hope?”
Antwerp, 12-13 December 201

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Current situation

Not Natura 2000



Natura 2000



Fishing is most often an existing use (=ongoing before site was included in Natura 2000 network)

Impacts of fisheries on Natura 2000

- Impacts of mobile, bottom-contacting fishing gears (primarily trawls) on protected habitats (sandbanks, reefs, etc.) and associated species communities
- Bycatch (primarily in gillnets) of protected species (seabirds, marine mammals, etc.)
- Reduction of populations of (shell) fish that serve as food for protected species (seabirds, marine mammals, etc.)
- ...

Birds Directive



- Conservation of all species of naturally occurring birds in the wild state in the EU, including **all seabirds**
- Means:
 - Sufficient habitat for all species (Art. 3)
 - Special Protection Areas (SPAs) for Annex I species and migratory species, including **66 species of seabirds** (Art. 4)
 - Strict protection (prohibitions) for all species (Art. 5) with limited exceptions (Art. 7 and 9)

Habitats Directive



- Conservation of other fauna, flora & natural habitats
- Means:
 - Special Areas of Conservation (SACs) for Annex I habitats and Annex II species (Art. 3-11), including certain **marine species and habitats**
 - SACs + SPAs: ‘coherent European ecological network [..] Natura 2000’
 - ‘system of strict protection’ (prohibitions & derogations, active conservation measures) for Annex IV species (Art. 12-16), including some marine species

Fisheries in Natura 2000: article 6(1) HD

- MS shall establish the **necessary conservation measures** for SACs to maintain and restore the habitats and species for which the site has been designated to favourable conservation status
- Conservation measures may include appropriate **management plans** or statutory, administrative or contractual measures that can address all activities in SACs including fishing
- For SPAs: special conservation measures (art. 4 Birds Directive)

Fisheries in Natura 2000: article 6(2) HD

- MS shall take **appropriate steps to avoid deterioration of habitats and significant disturbance of species** in SACs and SPAs
- Permanent obligation of result that applies to all ongoing activities, including fishing
- Strict case law: it is not allowed for MS to provide generally that fishing, aquaculture and hunting related activities do not cause disturbance (Case C-241/08)

Fisheries in Natura 2000: article 6(3) HD

- Plans and projects which are potentially harmful to SACs and SPAs:
 - Prior ‘appropriate assessment’
 - If significant harm cannot be conclusively ruled out, project may not be authorized
- ECJ ‘Cockle Fishing’ Case (C-127/02, 2004): mechanical cockle fishing falls within concept of project
- By analogy same applies to bottom trawling and certain other types of fishing activities that can have significant impact on protected habitats and species in SACs and SPAs

Fisheries in Natura 2000: article 6(4) HD

- Exception for harmful activities in SACs and SPAs under strict conditions (no alternatives, IROPI, compensation), but unlikely that it can be invoked for fishing (it does not qualify as ‘imperative reason of overriding public interest’)
- No other justifications available (e.g., lack of competence > cf. art. 14 MSFD)

Natura 2000 under the CFP

- Exclusive competence EU (art. 3(1)(d) TFEU)
- EU institutions have adopted some measures to restrict fishing in Natura 2000 sites within framework of CFP (upon request of MS)
- Some regulatory competence delegated to MS in Basic Regulation 2371/2002 (and some other Regulations)
- Commission guidance “Fisheries measures for marine nature 2000 sites” (2008) (not legally binding): procedure for fisheries measures within and beyond 12 NM of MS coastline
- Competence to regulate fishing outside CFP? **NO**, according to Commission

Safety zones around windfarms



Delegated competences MS under Basic Regulation 2371/2002

Article	Scope	Measures	Conditions	Procedure
Art. 8	All fishing vessels in waters under sovereignty or jurisdiction of MS	Emergency measures (max. 3 months)	Serious and unforeseen threat to conservation of living resources or to marine ecosystem resulting from fishing activities	Consultation Commission, RAC and affected MS when foreign fishing vessels are involved. Commission can confirm, cancel or amend measure.
Art. 9	All fishing vessels authorized to fish in 12 mile zone of MS	Measures for conservation and management of fisheries resources and to minimize effects of fishing on marine ecosystems	<ul style="list-style-type: none"> - Non-discriminatory - no measures adopted by EU specifically for this area - compatible with CFP objectives and - no less stringent than existing EU legislation 	Same as article 8, but only when foreign fishing vessels are affected.
Art. 10	Fishing vessels flying the flag of the MS in waters under their sovereignty or jurisdiction	Measures for the conservation and management of stocks	<ul style="list-style-type: none"> - Compatible with CFP objectives and - no less stringent than existing EU legislation 	None

NL marine Natura 2000 sites

- Territorial sea:
 - Voordelta (SAC+SPA)
 - North Sea coastal zone (SAC+SPA)
 - Vlakke van de Raan (SAC)
- EEZ:
 - Cleaverbank (SCI, proposed SAC)
 - Frisian Front (proposed SPA)
 - Doggerbank (SCI, proposed SAC)

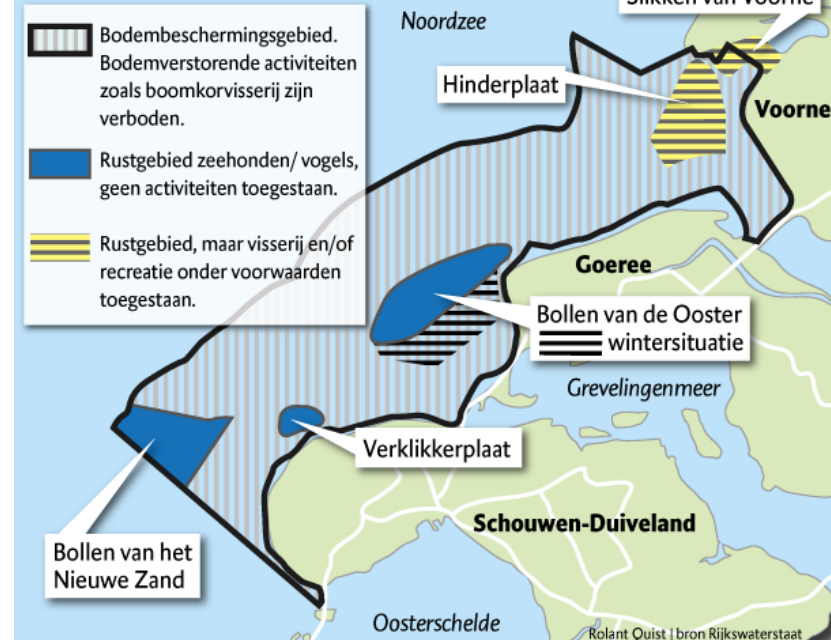


Fisheries measures in Voordelta

- Proposed fisheries measures on the basis of the 1998 Nature Conservation Act:
 - seabed protection area with restricted access for beam trawlers
 - creation of five rest zones for birds and seals
- Part of compensation measures for construction of harbour facilities 'Maasvlakte 2' in Voordelta (opinion Commission in 2003)
- NL notified the proposed fisheries measures to Commission, affected MS & RAC in accordance with article 9 of Basic Regulation
- Commission confirmed these measures by Decision of 11 June 2008

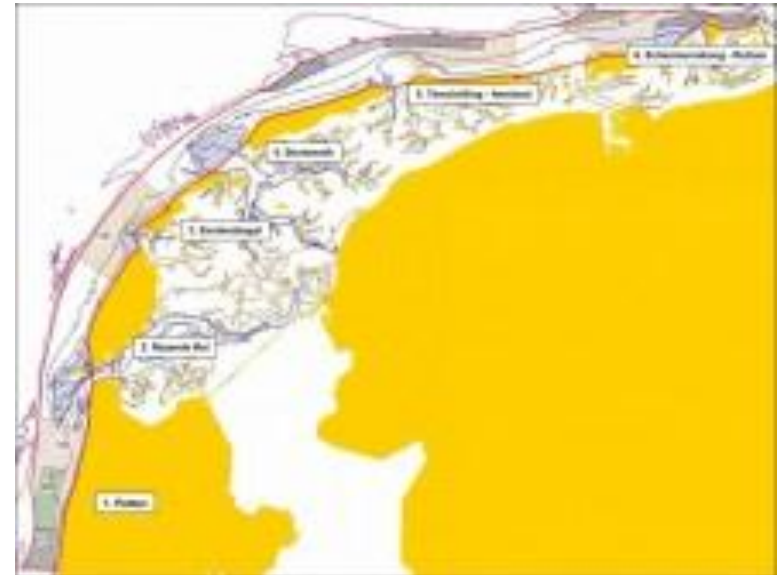
Rust- en beschermingsgebieden voor de kust

In het kader van een Europees netwerk van beschermde natuurgebieden is voor de Voordelta een beheerplan met gedragsregels opgesteld.



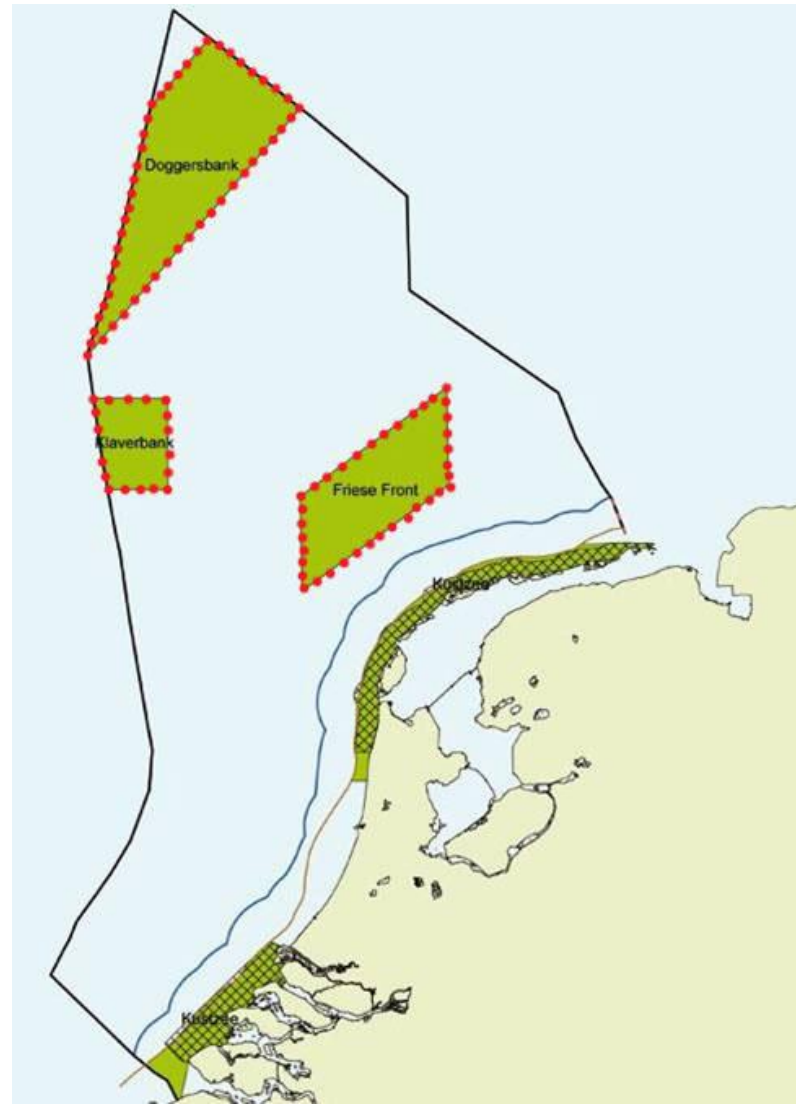
Fisheries measures in North Sea coastal zone, Vlakte van de Raan (& Voordelta)

- Agreement outcome of consultations with all stakeholders ('VIBEG')
- Proposed fisheries measures on the basis of the 1998 Nature Conservation Act:
 - Gradual phase out of bottom trawling with tickler chains (prohibited in 2016)
 - Zoning measures (access restrictions)
 - License requirement for Dutch fishing vessels
 - Entry notification requirement for foreign vessels
- NL notified the proposed fisheries measures to Commission, affected MS & RAC in accordance with article 9 of Basic Regulation
- Commission confirmed these measures with minor adjustments by Decision of 24 September 2012



NL marine Natura 2000 sites: EEZ

- FIMPAS project
- Agreement on fisheries measures for Frisian front (ban on gillnet fishing)
- Opinions differ for Cleaver Bank
- Also for Doggerbank (NL, Germany, UK)
- ICES advice 2012
- Proposed fisheries measures ultimately to be adopted directly by EU institutions under CFP, but uncertain when



Success or failure?

- Practice of NL demonstrates that fisheries measures can be adopted for Natura 2000 sites by MS within framework of CFP, but ...
- Procedure is complex, slow, partly political with uncertain outcome and not yet consistently applied

CFP: proposed new Basic Regulation

Article 12 Compliance with obligations under Union environmental legislation

1. In special areas of conservation within the meaning of Article 6 of Directive 92/43/EEC, of Article 4 of Directive 2009/147/EC and of Article 13(4) of Directive 2008/56/EC, **fishing activities shall be conducted by Member States in such a way so as to alleviate the impact from fishing activities** in such special areas of conservation.
2. The **Commission shall be empowered to adopt delegated acts** in accordance with Article 55, to specify fishing related measures **to alleviate the impact of fishing activities** in special areas of conservation.

Conclusions

- Impose obligations on MS and EU institutions to ensure that fisheries are conducted in full compliance with requirements of Birds and Habitats Directive
- Clarify division of competence between MS and EU
- Provide MS with delegated powers to adopt fisheries measures in **all** of their Natura 2000 sites (extension of art. 9) and/or delegate powers to Commission to adopt required measures
- Appropriate technical measures pursuant to the achievement of the conservation objectives of Natura 2000 sites have to be adopted as a condition of access to fishing opportunities in those areas.
- Commission should develop a guidance document on fisheries activities in the context of Natura 2000

EU Seabird Action Plan



“In EU waters actions under the EU-PoA will be supported by the increased implementation of fishery management measures in Special Protection Areas created under the Birds Directive (Article 4). [...] Demonstrable use of seabird friendly gear should be a pre-condition for access to fishing opportunities in such areas where seabirds are a qualifying feature and where bycatch threatens their favourable conservation status.”

Thank you for your attention!

