

Les petites îles de France

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La Charte Natura 2000

**un substitut à la maîtrise foncière
publique.**

texte de l'intervention:

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Comme les petites îles, le narcissus des Glénan est beau et rare ; il a failli mourir piétiné, il est sauvé maintenant.

Titre :

Implantation of the birds and habitat directives : some lessons to learn

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Article :

Introduction

The House of Parliament of the Netherlands (Tweede Kamer) asked in 2004 the minister of Agriculture, Nature and Food Safety, who's responsibility is the implementation of the BHD, what could be learned from the implementation successes and failures in other European countries. In the same year Alterra started a project analyzing this process in the 25 EC member states.

For the analyses written documents were used for all 25 countries and five countries were selected to visit and to interview the representatives of important stakeholder groups involved in the implementation process (national and regional government, scientists, NGO's for nature conservation, organizations of users like farmers, foresters, developers). In these countries (England, France, Hungary, Spain and Sweden) also a N2000- site was visited and problems were discussed with the local stakeholders.

Information was collected dealing with four topics:

- 1- Implementation
- 2- Interpretation
- 3- Integration
- 4- Image

Implementation

A first phase can be discerned in which all countries collected data to select Natura2000-sites, nominated (HD) and designated (BD) sites by their government and formulated new or adjusted their existing legislation. In spring 2005 nearly all 25 countries have lists of sites sent to Brussels of which only three (Belgium, Denmark, the Netherlands) were fully approved by Brussels.

Table 1 shows for six countries that numbers and area of N2000- sites vary greatly and this also true for all 25 member states. Most have nominated more land than water except the Netherlands and Denmark (not in the table).

Looking at SPA's it showed up that the following countries nominated more than 10% of their land: Austria, Estonia, Spain, Slovenia, Slovakia, Greece, Hungary, the Netherlands, Portugal. Less than 6% was nominated by the countries: Cyprus, Denmark, France, Ireland, Lithuania, Luxemburg, Malta, UK.

Looking at pSCI's more than 15% of their land was nominated by Estonia, Spain, Greece, Portugal and Slovenia. Less than 10% was nominated by: Cyprus, Czech R. Germany, Denmark, France, Lithuania, the Netherlands, Poland, UK.

Table 1 also shows a high number of sites in Sweden, Spain and France.

Assuming pSCI's and SPA's do not overlap (what is not the case) both their numbers added produces a mean area of N2000 sites (only land) that varies between 1862 ha (Sweden) and 10.591 ha (Spain), illustrating the relatively low mean area of sites in Sweden.

Nature/nature conservation	UK % (#)	Sweden % (#)	Spain % (#)	France % (#)	Hungary % (#)	Netherlands % (#)	Europe (mean %)
SPA's (BD)	5.8 (255)	6.2 (509)	16.5 (480)	2.2 (174)	12.2 (55)	12.5 (77)	8.5%
pSCI (HD)	6.5 (610)	13.6 (3903)	22.6 (1382)	6.8 (1219)	14.0 (467)	9.5 (141)	11.6%
Total area N2000 (km2) (land and water)	39.952	91.004	202.985	56.582	24.401	17.617	
N2000 only land (km2)	30.094	82.154	197.220	49.451	24.401	9.152	
Mean area only land (ha)	3.479	1.862	10.591	3.549	4.674	4.198	

Table 1 Overview of N2000 sites (SPA's and pSCI's) in 6 countries; the terrestrial area of pSCI and SPA compared to the terrestrial area of the member state, total number of SPA and pSCI, their total area (land and water), their area of land only and the mean area (after EU Barometer March 2005).

All countries have selected already protected areas as N2000 sites but especially Sweden, England and the Netherlands did so. In between 70-95 % of the N2000 sites were already protected in these countries.

Many countries have N2000 sites in which a marine part is noted. Only Belgium, France, Germany and England have selected already a few Marine Protected Areas. But marine site selection is a problem that has not yet been solved.

Also several countries are still adjusting their legislation.

This first phase is strongly delayed in all countries.

Two main reasons for this delay are 1) the lack of good distribution data of habitats and species and 2) problems with the social acceptance of the BHD.

Implementing the BHD the responsible ministries followed different ways to involve society. Two groups of countries can be discerned:

- 1- responsible ministry orchestrated the process with consultation of:
 - a- scientists/ expert bodies (museum, university, institute) and NGO's (nearly all countries)
 - b- regional and local authorities (Italy, Luxemburg, Belgium)
 - c- public (landowners, farmers etc.) (Sweden, France, Netherlands)
 - d- consultation by law of local government and/or stakeholders (Czech Republic, Hungary, Lithuania, Malta, Slovakia and Slovenia)
 - e- private stakeholders must agree with nominated sites (Lithuania, Slovenia)
- 2- Non governmental public agencies or specific bodies with executive powers organized the first phase: England (English Nature), Sweden (SEPA=Swedish Environmental Protection Agency), Latvia and Cyprus

In nearly all countries some opposition against BHD in this first phase evolved but varied from weak (Sweden, Spain, UK) to very strong (France, Finland).

Important opponents are :

- other ministries (many countries)
- regional government (Spain, Italy)
- stakeholder groups and/or private persons (many countries: Austria, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Lithuania, the Netherlands).

From this first phase it can be concluded that:

- Nomination and designation of N2000-sites is strongly delayed in all countries mainly because of lack of data/information and social acceptance;
- In most countries this phase is orchestrated top- down;
- In all countries opposition against the BHD evolved but varies from weak to very strong;
- The number of sites selected because of their nature value is smaller in many countries than the number of nominated sites put on the lists for approval by Brussels
- In some countries non governmental bodies facilitate the implementation process

In a second phase countries are implementing other conditions mentioned in the BHD as for example in the Article 6 HD.

Article 6.1 states: “.....member states must establish the necessary conservation measures involving, if needed, appropriate management plans.....”. Countries differ in the way they try to tackle this condition and develop management plans (MP) for sites. Again two groups of member states can be discerned:

- 1- MP is obligatory and based on national law: only few countries (Belgium/ Flanders, Denmark, Greece, Sweden and the Netherlands);
- 2- MP is voluntarily and
 - a- does not exist: Cyprus, Lithuania
 - b- is developing in pilot projects: Malta, Slovenia, Poland, Czech Republic, Slovakia
 - c- does exist as MP for already protected sites (many countries e.g. UK, the Netherlands)

The question for the existing and the new MP's is if their protection fits the BHD requirements (are they BHD-proof?). This can be a problem as is illustrated by the Latvian situation where N2000-sites fall into different protection categories: 247 Nature Reserves, 4 State Reserves, 3 National Parks, 38 Nature Parks, 23 Micro reserves.

MP's were not analyzed in the project but in November 2005 the Dutch government published for all protected habitats and species a (global) national conservation status and a guideline as regards to the contents of a MP. This content is very similar as for the Belgian (Flanders) MP's.

Contents of the Dutch MP

- 1- Future vision on the site, based on an inventory of habitats and species and important processes;
- 2- Identification of actors and stakeholders that use the site, existing plans and projects (inside and outside the site), administrative rules and legislation;
- 3- Trends and conservation status (FCS) of habitats and species worked out in conservation objectives (some times quantitative) and description of necessary air, water and soil conditions;
- 4- Activities inside and outside the site needed to reach the objectives (management, administrative and economic measures and instruments);
- 5- Existing use and outside activities that may damage the site;
- 6- Monitoring scheme;
- 7- Finances needed and financial sources.

Table 1. Contents of Dutch Management Plan

Besides the problems with

respect to the contents of MP's there is the question who will have the responsibility for and will take the lead writing MP's.

Again the member states can be positioned on a gradient from a more or less central orchestrated writing process (Top- down or bottom- up):

- 1- decentralized government: Netherlands (provinces), Spain (autonomous regions);
- 2- Public agencies and organizations: UK and Sweden;
- 3- NGO's with help of the government: Hungary;
- 4- Involved stakeholders: France.

The Dutch Mp's are , as said before, obligatory by law and will last for five years. They will be written under the responsibility of the provinces after consultation of regional and local government and administration and will have a steering group of landowners, users, NGO's, local actors and scientists. MP's can not force persons to take the necessary management measures. So site management will be voluntarily but contract based. Further, a MP describes the existing and future use of the site focusing on activities that can cause negative effects on the site objectives (FCS) and maybe will be the subject of Article 6 III and IV.

This top-down writing process is in contrast with the writing processes in for instance England and France. In England English Nature as a non governmental body acts as a mediator and facilitator between the responsible ministry and the organizations that will write MP's and planners in the area. In France we have the structure of the COFIL and the DOCOB. In both countries the MP seems to be more focused on dialogue and support for the MP, the needed management measures and monitoring.

One must have in mind that in the Netherlands most of the N2000-sites are owned and managed by state (e.g. the State Forestry, the Ministry of Defense and the Ministry of Traffic and Waterworks) or by private nature organizations at the national (Natuurmonumenten) or provincial level (Provinciale landschappen). It is supposed that less local and private stakeholders with different concerns that own or use a site simplifies (the internal) management problems. On the contrary in Holland sites are more vulnerable to possibly negative effects coming from external plans and projects.

Interpretation

Information was collected to analyze the way important notions in the BHD like precautionary principle, significant effects and the Favorable Conservation Status were filled in.

In most countries national guidelines helping to interpret these notions do not exist. In some a few guidelines exist or are prepared (England, France, Hungary, the Netherlands). But their global and general character was shown.

As a consequence in some countries (Sweden, the Netherlands, Finland) conflicts regarding these notions will be brought to court and judges have "the last word". In the Netherlands where significant effects have to be formulated at the site-level without clear interpretations nowadays commercially consultancy bureaus fill in this interpretation gap and formulate one sided and biased standards that can be scientifically discussed.

Although the global character of guidelines or interpretation rules they can play an important role as is illustrated by the English "Habitat Regulations Guidance Notes" that stimulate the integration of the BHD into other (sectoral planning) policies at the local level (see below). Maybe their acceptability is caused by the position of English Nature, that produced the Guidance Notes, as a non governmental but statutory public agency. Because of this position and combining several duties like advising, licensing (with regard to species protection) and organizing scientific research they can play a depolarizing role in the implementation process.

Also a description of the FCS at the national and/or site level is still missing in most countries. Again countries differ in who are involved in formulating the FCS at site level.

In general countries seem to follow two ways to interpret the important notions:

- a more top-down strategy in which (decentralized) government advised by scientists tries to coordinate and streamline the process of interpretation, in the meanwhile looking for the balance between ‘providing direction’ and ‘providing space’ (the Netherlands, Sweden);
- A more bottom- up strategy with a casuistic approach in which non governmental bodies at the national (England, EN) or local (France, COPIL) level promote political and public debate (France, England, Hungary).

Integration

In the project integration was seen as an important topic because it shows if nature conservation and nature conservation policies are organized in a sectoral way or more integrated in other policies. Integration can occur on three levels (see table 2). Especially planning integration can be seen as a means to prevent possible external negative effects of new projects and plans on Natura2000-sites (compare Article 6 III HD).

1. Formal integration (strategic)	1. legislative integration
2. Material (tactical)	2. planning integration
3. Practical integration (operational)	3. licensing integration

Table 2. Three levels of Integration of policies.

Formal integration of nature conservation law in an environmental codex is known from Sweden (Miljöbalk 1999), Finland and Germany (Umweltgezetzbuch). However, formal integration in these countries did not automatically result in practical integration.

In other countries nature conservation law is integrated or related to EIA legislation (Spain) or legislation on sustainable development (France) or spatial planning (Netherlands).

Further, nature conservation goals at a national level seem to cause a problem for formal and lower integration especially in countries with a federal constitution (Austria, Belgium, Germany, Spain) because of the specific responsibilities of the lower government (Länder, autonomous regions).

Still in several member states some kind of planning integration exists. Especially in Sweden, Denmark and England but also Malta nature conservation policy is integrated in spatial planning (procedures). Local planning authorities do integrate nature and other sectoral policies into a quite decisive planning permission. Non governmental agencies with statutory duties such as English Nature in England, SEPA in Sweden and probably MEPA on Malta play an important role in planning procedures.

But also in other countries some planning integration exists. Latvia integrates BHD into the National Water Management Plan, Estonia does the same with the Rural Development Plan and Lithuania integrates the BHD obligations into the Spatial Planning Schemes.

Integration of licenses does not exist in any country. So licensing for plans and projects is highly sectoral. But integrated permits are discussed in some countries (Netherlands, England).

It can be concluded that as far as legislative integration occurs in some countries it has not succeeded or only partly in practical integration. But discussions on integrative permits have been started in a few countries. Especially spatial planning and planning for water management seem successful to integrate nature conservation policies and so BHD in other planning systems. In the Netherlands the new Spatial Planning Law has got a broader concept than only country and town building. Now also environmental, water issues and natural and cultural heritage are included. Further, the new Nature Conservation Law is connected with the Spatial Planning Law because a MP can be part of spatial planning and effects of spatial plans are submitted to ministerial approval.

Further practical integration will take place by integration of financial budgets at the provincial level. The so called Countryside Investment Budget combines money from several sources (agriculture, countryside development, nature conservation).

Images of BHD

In the project stakeholders were asked if they experience the BHD as a blessing or a burden. Clear answers were given but the general question can not be answered very easily. Specific answers are influenced by factors such as the big difference between countries in implementation strategy they have chosen and by the high variation of stakeholders their positions and powers in the 25 member states.

However, all answers seem to be related to the perceptions of individuals, groups and organizations of nature and nature conservation. In all documents and interviews we can discern images of nature and the BHD goals which are well known from scientific discourse analysis. This kind of conflict analysis concentrates on means of communication that are part of a conflict and tries to explain the conflict in terms of definitions of reality, identity and risks. Three of the most common discourses types on nature, biodiversity and environmental issues are:

- 1- Preservation discourse: in preservation discourses the main aim is the *state* of biodiversity and to protect habitats and species (biodiversity) without any concern or responsibility for the imposed restraints on those utilizing natural resources. Negative effects of conservation like economic costs for specific groups of users do not get much attention.
- 2- Win-win discourse: also the focus is on the *state* of biodiversity but there is an explicit concern for social impacts (compare loss of recreational opportunities, stable and clean water supplies and economic development). The aim is to protect and use areas and species by means of partnership between local and external actors. Conservation is the result of common effort and each actor is supposed to receive a share of the benefits.
- 3- Traditional discourse: here not the state of nature and biodiversity is the main concern, but the focus is on the local people. From the win-win perspective local people will be involved in the management of the environment and natural resources by participation. But from a traditionalist perspective local people with their local and traditional knowledge ought to control this management. From this perspective win-win solutions are workable but conservation measures are carried out and controlled by the local people.

Other discourse types do exist and which will be present in a specific biodiversity conflict will vary from case to case. So the three discourses mentioned above are no generalizations of all the conflicts that exist implementing the BHD. That is the reason why the implementation processes and risen conflicts in member states can not be fully described from the three perspectives mentioned.

Nevertheless, in England the implementation process of BHD is perceived as positive at the local level. Projects and plans are voluntarily brought to the negotiation table. Here the statutory organizations, voluntary NGO's and developers jointly try to find solutions for the use and management of nature and natural resources that are beneficial for wildlife and people. This process is mentioned and positively judged by many stakeholders at the national and local level. It contributes to mutual understanding and learning, but especially to acceptance of the BHD. Many sites were named where proposed developments got permission due to changes and adjustments of the location, design or the whole project.

This image contrasts with the image of the BHD in the Netherlands. Conflicts between nature and economy can be found regularly in newspapers and especially developers have blamed the BHD and the ministry of Agriculture, Nature and Food Safety to block their plans and projects. So in many cases the judge decides what will happen. But information from other countries implementing the BHD in their way seems to influence the situation. This can be illustrated from discussions between different stakeholder groups that started very recently at the national and local level.

Le littoral, un cas particulier

Les espaces naturels dont il sera question sont les espaces naturels situés dans les communes littorales.

Ils se distinguent par deux caractéristiques :

- ils appartiennent à une zone de pression humaine intense, et sont sous une menace permanente d'urbanisation ;
- ils sont exposés à l'exercice de la Maîtrise Foncière Publique, euphémisme pour qualifier l'appropriation par l'Etat de ces espaces. Appropriation qui a constitué un temps la seule réponse de l'Etat à l'urbanisation après qu'on eût constaté la relative inefficacité des zonages .

Il est clair que Charte Natura 2000 et Maîtrise Foncière Publique sur le Littoral (MFPL) ne sont pas des concepts de même nature . Si elles sont ici rapprochées, c'est que la MFPL génère un type de gestion, dont on peut craindre qu'elle devienne prépondérante sans que, pour autant, elle se révèle être la plus appropriée pour la mise en oeuvre de Natura 2000.

La Charte est l'avenir de Natura 2000

La Charte Natura 2000 concrétise l'engagement des propriétaires de terrains inclus dans un site Natura 2000. Elle est l'outil principal de gestion d'un espace qui, dans le cas général, est déjà un espace naturel, et que l'on souhaite pérenniser dans cet état.

Dans le cycle de vie de Natura 2000, la Charte intervient en concurrence avec le Contrat Natura 2000, après les phases de désignation des sites, d'établissement d'un DOCOB, et de création du Comité de Pilotage.

Dans une première période, seuls des Contrats avec rémunération avaient été imaginés. Ceux-ci ne pouvaient être souscrits par des propriétaires non exploitants

agricoles. Par ailleurs, il y a peu de crédits disponibles et les bénéficiaires potentiels, les agriculteurs, sont dans une logique PAC, de l'argent pour des résultats, peu compatible avec une gestion d'espaces naturels.

La Charte est donc un acte volontaire, contractuel, donc un contrat (malgré le nom), entre la puissance publique et les propriétaires. Il doit pour cette raison rester simple et attractif.

Pour l'essentiel, il s'agit d'engagements "à faire ou ne pas faire", engagements de natures diverses, portant aussi bien sur l'ensemble que sur des parties homogènes du site. Ces engagements sont en nombre limité.

Il n'y a pas d'obligations de résultats mais seulement obligation de moyens.

Sa durée de vie est de 5 ou 10 ans.

Il n'y a pas de rémunération mais une exonération de la TFNB (taxe foncière sur le foncier non bâti), de caractère symbolique.

Compte tenu du caractère volontaire de la Charte, le contrôle, pour reprendre le vocabulaire issu de la PAC, ou du Contrat Natura 2000, consiste pour l'essentiel en une information sur la bonne exécution.

Beaucoup plus important est le suivi scientifique, pratiqué en accord avec le propriétaire.

On peut dire que les propriétaires d'espaces naturels littoraux, tant qu'il en reste, sont favorables à la Charte. Elle leur paraît une réponse adaptée et raisonnable à la poursuite des objectifs Natura 2000. Elle est aussi, pour eux, une protection contre les talibans et les touristes de l'écologie ! Les espaces littoraux sont fragiles et la fréquentation est la principale cause de la dégradation.

Pour les propriétaires, la Charte permet, avec du consensus, d'éviter la réintroduction du réglementaire, réglementation illusoire de surcroît dans de nombreux cas.

Les propriétaires souhaiteraient cependant que soient précisées les conditions d'établissement des engagements à souscrire. Ils marquent aussi leur préférence, en matière d'évaluation, pour la pratique périodique du bilan patrimonial.

La Maîtrise Foncière Publique et la Gestion déléguée.

La maîtrise foncière publique ne constitue pas un moyen de gestion, c'est l'appropriation publique de la propriété privée par l'Etat.

Pas plus que l'appropriation collective des moyens de production n'a amélioré le sort du prolétariat soviétique, l'appropriation collective des espaces littoraux, si elle a contribué à l'arrêt de l'urbanisation, ne constitue pour autant, une protection automatique de l'environnement.

Il y a deux pratiques de la maîtrise foncière qu'on présente parfois comme voisines et qui sont en réalité très différentes, celle du Conservatoire du Littoral (CEL) et celles du National Trust (NT) britannique.

Le CEL pratique ses acquisitions selon un plan cinquantennal, en attendant de devenir centennal, avec une contrainte de budget annuel qui est un incitatif puissant à l'achat de ce qui est disponible.

Le NT agit en fonction des circonstances et des urgences, il le fait avec des fonds propres, même s'il a parfois une aide publique exceptionnelle. Enfin, et surtout, le NT gère lui-même ses propriétés.

En France, le législateur n'a pas été au bout de son projet, il n'a pas donné au CEL le pouvoir de gérer.

C'est pourquoi on est en présence d'une gestion déléguée de type technico-administratif, pour simplifier, celle de collectivités locales.

Il ne s'agit pas ici de porter sur cette gestion un jugement de quelque manière que ce soit, scientifique ou technique, mais de mettre en évidence les conséquences du recours à la gestion déléguée, elle-même conséquence de'une maîtrise foncière inachevée.

Le premier inconvénient et le principal est d'ordre budgétaire.

Au moment où l'Etat privatise les autoroutes et met en vente une partie de son parc immobilier, il est légitime de s'interroger sur la pertinence de l'acquisition, parfois accompagnée de spoliation, de biens que leurs détenteurs gèrent d'une manière satisfaisante.

Mais il y a plus. Le transfert de la gestion privée à une gestion publique a pour effet d'en accroître le coût, de deux manières, parce que la gestion publique est plus chère que la gestion privée, parce que la gestion privée est supportée par les propriétaires et donc gratuite pour la Collectivité.

Et surtout, la gestion déléguée n'est pas optimale au regard de Natura 2000, on peut l'expliquer en citant trois exemples :

Le statut du bâti dans les espaces naturels littoraux.

Le littoral français ne ressemble pas à la Patagonie à l'époque de Magellan : les espaces dits naturels sont parsemés de bâti à faible densité, et à fort pouvoir de dissuasion du vandalisme et de la fréquentation sauvage.

La doctrine du CEL à ce sujet, la destruction, augmente les coûts et affaiblit la protection.

Même observation pour la *gestion du trait de côte* avec la doctrine du CEL, laisser faire la nature, une position dogmatique qui gagnerait à être nuancée.

Enfin la gestion déléguée, issue de la maîtrise foncière, se trouve confrontée à une demande accrue de fréquentation. Dans Maîtrise Foncière Publique, on entend publique, et nous savons bien qu'il est difficile de concilier *maintien de la Biodiversité et fréquentation*. Difficile mais pas impossible : on peut estimer que la gestion déléguée convient à deux types d'espaces, des espaces de grande envergure, détenus par des propriétaires absentéistes, défaillants, ou empêchés, des sites à très forte attractivité touristique.

Mais elle ne convient pas à tous les autres espaces naturels littoraux, soit la très grande part des 300000 ha du périmètre d'intervention et des zones de 1ère, 2ème et 3ème priorité.

Je ne souhaite pas conclure, mais simplement dire que, propriétaire privé appartenant à une espèce menacée, en voie de disparition programmée, je cherche à montrer la pertinence et la rationalité de la solution Charte Natura 2000.

En outre, ce qui peut sembler être une critique du CEL n'en est pas une . Le CEL fait son travail et il le fait bien. On ne reproche pas à un lion d'être un prédateur. Si les gazelles ont de la difficulté à échapper au lion, elles doivent convaincre le créateur du lion de modifier son comportement et de les épargner.