

Access restriction decree
Hinderplaat,
Bollen van de Ooster, Bollen
van het Nieuwe Zand

May, 13 2008

Access restriction decree
Hinderplaat,
Bollen van de Ooster,
Bollen van het Nieuwe
Zand

May, 13 2008

Minister of Agriculture, Nature and Food Quality

Restriction of access to natural areas under Section 20 of the Nature Conservation Act 1998 for the 'Voordelta' Natura 2000 area.

Introduction

Section 20, Subsection 1 of the Nature Conservation Act 1998¹ stipulates that provincial executives may restrict access to protected nature reserves as defined under Section 10, Subsection 1; designated areas as defined under Section 10a, Subsection 1; other areas for which such a designation is under consideration as defined under Section 12 or parts of such areas insofar as is necessary for the conservation of the ecological value of said area.

Section 20, Subsection 2 of the Nature Conservation Act 1998 stipulates that the authority as defined in Subsection 1 rests with the Minister of Agriculture, Nature and Food Quality in agreement with another Minister in the event that the area as defined under Subsection 1, or a part thereof, is managed by or falls under the jurisdiction of this Minister or other Ministers.

The following decree is to be enacted in agreement with the Minister of Transport, Public Works and Water Management. The Regional Affairs mandate² in force at the Ministry of Agriculture, Nature and Food Quality stipulates that the Southern Regional Director for this ministry be authorized to take this decision on behalf of the Minister of Agriculture, Nature and Food Quality.

It is necessary to restrict access to a number of areas within the Voordelta Natura 2000 area (hereinafter 'Voordelta') in order to protect the existing and future ecological value of the area. The basis for imposing such access restrictions can be found in the Voordelta Designation Decree (19 February 2008, ref DRZO/2008-113) with regard to fulfilling Voordelta Natura 2000 objectives, as well as compensation obligations as incorporated into the Nature Conservation Act licence (17 April 2008, ref DRZW/2008-1670) issued for construction and presence of Maasvlakte 2. This is described in more detail in the general explanatory note accompanying this decree.

This decree specifically regulates restricted access to the areas detailed below. Specific exceptions to access restrictions detract in no way from any licensing requirements as defined under Section 19d of the Nature Conservation Act 1998, unless exceptions as defined under Section 19d, Subsection 2 of the Nature Conservation Act 1998 (projects or activities in accordance with the management plan) are applicable.

Decree

Section 1

Access to 'Hinderplaat', situated within the Voordelta as shown on the map accompanying this decree, is to be restricted.

Restricted access to Hinderplaat applies to all types of activities throughout the whole of the year with the exception of the activities listed below:

¹ Effective as of *Staatsblad 2005* [Bulletin of Acts, Orders and Decrees 2005], 473

² *Staatscourant 2006* [Government Gazette 2006], No. 91

Organised Canoe Trips:

A total of ten organised canoe (kayak) trips are permitted in the period between 01 September and 01 May with a maximum of two such trips on any one day. The following supplementary conditions also apply:

- Access is only permitted in a group (maximum sixteen persons) led by a certified tour guide or instructor affiliated to either the NKB (Dutch Canoe Association) or the TKBN (Dutch Tourist Canoeing Association).
- Setting foot on tidal plains is prohibited. Keep a distance of at least 250 m from resting seals.
- Excursions must be registered with the Handhaving Voordelta registration centre at least 48 hours in advance. The registration centre can be contacted via the non-emergency police telephone number 0900 8844.

Trawling:

Beam trawlers with tickler chains and shrimp trawling with an engine capacity of less than 191 kW (260 hp) are permitted to fish between 01 September and 01 May subject to existing permission for such usage at the time of this decree being enacted. This concerns two enterprises, namely vessels OD 2 and SL 22. Continued usage is permitted subject to the following conditions:

- A distance of at least 250 m must be kept from tidal plains.
- The maximum speed permitted is 7 knots (13 km/h).
- Both vessels must be equipped with serviceable tracking equipment for enforcement purposes.

Cast Net Fishing:

Cast net fishing (using gillnets and entangling nets) is permitted throughout the whole of the year subject to existing permission for such usage at the time of this decree being enacted. This concerns one enterprise, namely vessel Goeree 47. Continued usage is permitted subject to the following conditions:

- A distance of at least 150 m must be kept from tidal plains. Before, during and after the common seal's suckling period (01 May to 01 September), a distance of at least 250 m must be kept from tidal plains.
- The maximum speed permitted is 7 knots (13 km/h).
- The fishing vessel must be equipped with serviceable tracking equipment for enforcement purposes.

General Aviation:

General aviation including helicopter, glider and inspection, survey or surveillance flights are permitted over this area above an altitude of 1,000 ft (approx 300 m) as opposed to regular altitudes of 500 ft (approx 150 m) above open sea. Paragliding and hang gliding are expressly prohibited above this area.

For all other forms of leisure aviation (motorised or unmotorised), this area has been designated a 'nature Conservation area' in accordance with the code of conduct for general aviation, *Verantwoord Vliegen*³ ['Responsible Flying'].

The code of conduct stipulates that these areas should be avoided wherever possible. If flying over these areas is unavoidable, then an altitude of at least 1,000 ft (approx 300 m) must be maintained, except in situations where this is unfeasible due to safety considerations.

Access to 'Bollen van de Ooster', located within the Voordelta as shown on the map accompanying this decree, is to be restricted.

³ Code of Conduct *Verantwoord Vliegen* ['Responsible Flying'], Royal Netherlands Aeronautical Association (RNAA), 2004

Section 2

Restricted access to Bollen van de Ooster applies throughout the whole of the year for the smaller summer resting area as indicated on the map. From 01 November to 01 April, restricted access applies for the larger winter resting area as indicated on the map.

Restricted access to Bollen van de Ooster applies to all types of activities with the exception of the activities listed below:

Commercial and Leisure Navigation via Corridor:

Navigation through the winter resting area via the designated corridor subject to a maximum speed of 7 knots (13 km/h). Surfing through the corridor is strictly prohibited.

Canoeing, Windsurfing and Surfing:

Canoeing (kayaking), windsurfing and surfing in the northeastern section of the resting area throughout the whole of the year as indicated on the enclosed map (*see Section 5*). Entering tidal plains in this part of the resting area with the sole purpose of pursuing the abovementioned sports is also permitted.

General Aviation:

General aviation including helicopter, glider and inspection, survey or surveillance flights are permitted over this area above an altitude of 1,000 ft (approx 300 m) as opposed to regular altitudes of 500 ft (approx 150 m) above open sea. Paragliding and hang gliding are expressly prohibited above this area.

For all other forms of leisure aviation (motorised or unmotorised), this area has been designated a 'nature Conservation area' in accordance with the code of conduct for general aviation, *Verantwoord Vliegen* ['Responsible Flying'].

The code of conduct stipulates that these areas should be avoided wherever possible. If flying over these areas is unavoidable, then an altitude of at least 1,000 ft (approx 300 m) must be maintained, except in situations where this is unfeasible due to safety considerations.

Section 3

Access to 'Bollen van het Nieuwe Zand', located within the Voordelta as shown on the map accompanying this decree, is to be restricted.

Restricted access to Bollen van het Nieuwe Zand only applies from 01 November to 01 May.

Restricted access to Bollen van het Nieuwe Zand applies to all types of activities with exception of activities listed below:

General Aviation:

General aviation including helicopter, glider and inspection, survey or surveillance flights are permitted over this area above an altitude of 1,000 ft (approx 300 m) as opposed to regular altitudes of 500 ft (approx 150 m) above open sea. Paragliding and hang gliding are expressly prohibited above this area.

For all other forms of leisure aviation (motorised or unmotorised), this area has been designated a 'nature Conservation area' in accordance with the code of conduct for general aviation, *Verantwoord Vlieger*⁴ ['Responsible Flying'].

⁴ Code of Conduct *Verantwoord Vliegen* ['Responsible Flying'], Royal Netherlands Aeronautical Association (RNAA), 2004

The code of conduct stipulates that these areas should be avoided wherever possible. If flying over these areas is unavoidable, then an altitude of at least 1,000 ft (approx 300 m) must be maintained, except in situations where this is unfeasible due to safety considerations.

Section 4

Access restrictions described above in Sections 1 through 3 do not apply to the following activities under Section 20, Subsection 2 of the Nature Conservation Act 1998:

Performing Necessary Government Tasks:

Presence throughout the whole of the year for tasks performed by the government or on behalf of the government, with or without the use of a vessel or vehicle, insofar as is necessary for purposes of conservation, maintenance, demarcation, monitoring, inspection or tracking and military activities.

Cable and Pipeline Maintenance:

Maintenance work carried out on cables and pipelines between 01 September and 01 May. Access outside of this period is only permitted as a matter of urgent necessity subject to the discretion of the competent authority.

Section 5

1. Areas to which access has been restricted by virtue of this decree are shown on the associated map titled 'Access Restrictions in the Hinderplaat, Bollen van de Ooster and Bollen van het Nieuwe Zand Resting Areas (separate map)' and defined in detail by means of coordinates.
2. In the field and on the water, restricted area boundaries can be identified by means of signposts and buoys.

Section 6

This decree is to be announced in the *Staatscourant* [Government Gazette]. An explanatory note accompanying this decree must be read in conjunction with the order.

MINISTER OF AGRICULTURE, NATURE AND FOOD QUALITY
per pro

Southern Regional Director

Objections

It is possible for stakeholders to lodge an objection to this decree in writing under provisions set out in the General Administrative Law Act. Any such notices of objection should be lodged within six weeks of the order's publication in the *Staatscourant* [Government Gazette] at the following address:

Minister of Agriculture, Nature and Food Quality
Dienst Regelingen
Afdeling Recht & Rechtsbescherming
PO Box 20401
2500 EK The Hague
The Netherlands

Notices of objection should be signed and should include a minimum of the following items:

- a. name and address of the party lodging the objection
- b. date

-
- c. description of the decree against which an objection is being lodged
 - d. grounds for objection

Explanatory note

Natura 2000 Areas

The Voordelta is home to flora and fauna of special ecological value. This is why this area has been designated a Natura 2000 area under the auspices of the EU Birds and Habitats Directive. The Netherlands is obliged to establish and maintain a 'favourable conservation status' for certain species and their habitats. Wildlife conservation is legally regulated under the Flora and Fauna Act, and conservation areas are legally regulated under the Nature Conservation Act 1998. The Nature Conservation Act 1998 requires that a management plan be drafted for all Natura 2000 areas.

Flora and fauna of special ecological value can be found throughout the whole of the Voordelta; however, the greatest diversity is located in the northern half of the area. Conservation measures are therefore most effective when applied to these northern areas.

Maasvlakte 2 Compensation Report

Development of Maasvlakte 2 in the Voordelta Natura 2000 area will result in the loss of flora and fauna of ecological value partly due to a reduction of the Natura 2000 area's size by 2,455 hectares. The key spatial planning decision (hereinafter KSPD), *Rotterdam Main Port Development 2006*, stipulated that this loss be compensated by establishing a conservation area elsewhere in the Voordelta, where usage restrictions could be imposed. The KSPD also stated that usage restrictions and other measures would help improve the ecological value of the conservation area. Ecological demands were taken into consideration and weighed against the extent to which restrictions should be imposed on human activity, particularly in light of existing usage, human or otherwise.

The Nature Conservation Act licence issued for the construction and presence of Maasvlakte 2 includes a compensation obligation concerning Habitat Type 1110 and a number of species of bird.

Measures

In the short term, it is important to limit access to certain areas of the Voordelta in order to be able to compensate in a timely fashion for the effects of the construction and presence of Maasvlakte 2, and in order to maintain a watch on the conservation and preservation of flora and fauna of ecological value as incorporated in the Voordelta Designation Decree.

Applicable measures for the Voordelta will also be incorporated into the Voordelta Management Plan. Until this management plan comes into effect, provisions of Section 19d of the Nature Conservation Act 1998 remain fully applicable. This decree is only aimed at regulating access and restriction of access to certain areas, but does not provide for any dispensations for licensing requirements in cases where these stem from any applicable legislation.

The Environmental Impact Assessment document and the appropriate evaluation (made for the preparation of the Managementplan Voordelta) are the foundations for the access restriction decrees. They will also be incorporated in the Managementplan Voordelta. The goal of the management plan and of the access restriction decree is: to conserve the protected natural values, to compensate the loss of protected natural values in the construction of Maasvlakte 2 and within the bounds of nature conservation take into account the interests of recreational users, tourism and fisheries.

Explanatory Notes on Access Restrictions

Hinderplaat

Hinderplaat is an important resting and foraging area for the eider duck. Conservation targets have been set for this species in the Voordelta Designation Decree.

Within this area, there are tidal plains adjacent to deep channels that are of importance to the common seal. Improvement targets have been set for the common seal in the Voordelta Designation Decree.

All tidal plains within this area form extremely important resting areas for the Sandwich and common terns. Conservation targets have also been set for these species in the Voordelta Designation Decree. The Nature Conservation Act licence issued for the construction and presence of Maasvlakte 2 imposes a compensation obligation for these species.

Bollen van de Ooster

Bollen van de Ooster forms an important area for the protection of birds and an important resting and foraging area for the common scoter (in coastal areas), and the Sandwich and common terns (on tidal plains). Conservation targets have also been set for these species in the Voordelta Designation Decree. The Nature Conservation Act licence issued for the construction and presence of Maasvlakte 2 imposes a compensation obligation for these species.

This area is also of special importance for the protection of common seals, which mainly inhabit the southern tip of the tidal plains. Improvement targets have also been set for the common seal in the Voordelta Designation Decree.

Bollen van het Nieuwe Zand

Bollen van het Nieuwe Zand forms one of the most important central resting and foraging areas for the common scoter. Conservation targets have also been set for this species in the Voordelta Designation Decree. The Nature Conservation Act licence issued for the construction and presence of Maasvlakte 2 imposes a compensation obligation for this species.

Natura 2000 Objectives

Common Seal

At the beginning of the last century, around ten thousand common seals inhabited the Delta. Pollution, hunting and encroachment into their habitat due to the Delta Works had reduced their numbers to just a few dozen individuals up until fifty years ago. Over recent years, their numbers have grown to more than a hundred in the Delta area, 50% living in the Voordelta area.

They use tidal plains such as those at Hinderplaat, Bollen van de Ooster (Aardappelenbult) and Verklikkerplaat to rest. However, they do not breed well in the Voordelta. The plains provide insufficient peace and quiet for them to give birth to, suckle and raise their pups. Year-round peace and quiet is essential; the most critical period being before, during and after the pups' suckling period from 01 May to 01 September.

Measures restricting access to their resting places in Hinderplaat, Bollen van de Ooster and Verklikkerplaat situated in the Voordelta are designed to allow at least two hundred common seals to inhabit the entire Delta. Here, they will be able to raise their pups, thus meeting objectives set out in the Voordelta Designation Decree.

Eider Duck

The eider duck is principally a winter visitor in the Voordelta, but smaller groups are also present throughout the summer. Eider ducks can always be found in shallow, sheltered areas of Hinderplaat and Bollen van de Ooster. Numbers fluctuate from year to year depending on annual variations in the availability of shellfish in the area. Eider duck population levels in the Voordelta are under pressure due to reduced supplies of food resulting from commercial

shellfish harvesting and the nuisance caused by increasing recreational pressure. Conservation measures have been imposed for the Voordelta, as conservation of this species is under threat throughout the whole of the country.

For this reason, access to areas directly east of Hinderplaat is to be restricted to ensure that populations can remain in the Voordelta.

Maasvlakte 2 Compensation:

Sandwich and Common Terns

The Sandwich and common tern breed outside the Voordelta in nearby Natura 2000 areas. Their diet consists of small fish, which they catch by diving in shallow coastal areas near sandbanks as described above (Habitat Type 1110). Food sources located near to breeding colonies will be lost due to the construction of Maasvlakte 2. This will have the greatest impact in the summer period for fledglings whose flight radius is still limited.

Current conditions provide limited peace and quiet on the mud plains that the birds use in the Voordelta. Measures restricting access are designed to create a more restful environment in the summer period on the Voordelta tidal plains at Hinderplaat and Bollen van de Ooster. This will allow the Sandwich and common terns to utilize the area better as a resting place for their young and to make it easier to reach food supplies at sea.

Common Scoter

The common scoter is a migrant bird that visits the Voordelta in the winter months. This species can principally be found in coastal regions to the southeast of Bollen van de Ooster and in and around Bollen van het Nieuwe Zand. In the summer months, smaller numbers of common scoter remain in the Voordelta using it as a moulting area.

Common scoters feed on shellfish that they find in shallow coastal waters that will partially be lost due to the construction of Maasvlakte 2. Measures restricting access to coastal areas at Bollen van de Ooster (and Bollen van het Nieuwe Zand) are designed to safeguard adequate levels of and access to food supplies as compensation for the potential loss of this species' foraging area around Maasvlakte 2.

Wildlife is particularly sensitive to disturbance and nuisance caused by recreational water users and shipping traffic. By guaranteeing peace and quiet throughout the winter months in areas where these species forage and rest in large numbers, it is hoped that favourable conditions for the common scoter can be maintained throughout the whole of the Voordelta equivalent to those prior to the construction of Maasvlakte 2. During the summer months, a shorter summer resting period suffices.

For technical reasons the map belonging to this decree has been incorporated in the Annex map appendices