

Access restriction decree Seabed protection area

May, 13 2008

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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 the Seabed protection area in the Voordelta, as shown on the map accompanying this decree, is to be restricted for beam trawling with tickler chains with an engine capacity greater than 191 kW (260 hp).

Restricted access applies throughout the whole of the year.

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

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

Section 2

1. The area to which access has been restricted by virtue of this decree is shown on the associated map titled 'Voordelta Conservation Areas' and defined in detail by means of coordinates.

Section 3

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 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

Maasvlakte 2 Compensation:

Habitat Type 1110 (permanent sandbanks in shallow coastal waters)

Many species of land animal and fish live on sandbanks in alternating fresh and salt-water tidal deltas. These delta areas are an important feeding ground for birds and seals, which is why it is so important to conserve these areas. In total, 2,455 hectares of this type of habitat in the Voordelta will be lost due to expansion of Rotterdam Port to Maasvlakte 2. Part of the soil fauna (biomass) will disappear due to the loss of this land area that would otherwise serve as food for fish and birds.

Since it is not possible to create sandbanks in shallow coastal waters at any other locations, measures are being taken to improve the quality of similar parts of the seabed in other areas of the Voordelta to serve as feeding grounds for birds and fish. The objective is to raise levels of biomass within the conservation area as a source of food for birds and fish to keep total biomass levels within the Voordelta at a constant level comparable to the situation before the construction of Maasvlakte 2. This will act as compensation for the effects of the construction and presence of Maasvlakte 2.

The net area of the conservation area totals 24,550 hectares, ten times the area that will be lost. This factor of ten can trace its origins back to expert assessments and existing research data that showed that restricting an area's usage can generate at least 10% improvement in soil quality due to biomass growth.

Based on expert assessment and further investigation, it was determined in Section 1 of the KSPD that establishing a sea reserve (termed a conservation area in this decree) would be the best way to compensate for the effects of the construction and presence of Maasvlakte 2.

Subsequent research has since shown that excluding trawlers from the conservation area with an engine capacity greater than 191 kW (260 hp) was adequate to achieve this objective. The restricted access decree follows up on these findings.

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