II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 11 June 2008

on the confirmation of measures proposed by the Netherlands for the conservation of marine eco-systems in the Voordelta area

(notified under document number C(2008) 2415)

(Only the Dutch text is authentic)

(2008/914/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy ([1]), and in particular Articles 8(3) and 9(2) thereof,

Whereas:

(1) Article 3(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([2]) requires Member States to contribute to the creation of the network of special areas of conservation called 'Natura 2000', hosting the natural habitat types and species listed in the Annexes to that Directive.

(2) Article 6(1) of Directive 92/43/EEC requires Member States to establish, for special areas of conservation, the necessary conservation measures.

(3) On 28 February 2008 the Netherlands designated the area called Voordelta as a special area of conservation within the meaning of Article 3(2) of Directive 92/43/EEC and informed the Commission about its intention to take measures to restrict fishery activities in that area.

(4) Article 6(4) of Directive 92/43/EEC requires Member States to take all compensatory measures necessary to protect the overall coherence of the Natura 2000 network when a plan or project is carried out with significant negative effects on a Natura 2000 site. In this context, following the construction of harbour facilities 'Maasvlakte 2' in the Voordelta area, the Netherlands needs to take appropriate compensatory measures. This project was subject to a favourable Commission opinion (Commission opinion C (2003) 1308 of 24 April 2003).

(5) Measures concerning the conservation, management and exploitation of living aquatic resources are subject to the rules of the common fisheries policy.

(6) Article 9 of Regulation (EC) No 2371/2002 enables Member States to take non-discriminatory measures to minimise the effect of fishing on the conservation of marine eco-systems within 12 nautical miles, provided that the Community has not adopted measures addressing conservation and management specifically for that area. The Member States' measures must be compatible with the objectives of the common fisheries policy as set out in Article 2 Regulation (EC) No 2371/2002 and no less stringent than the existing Community legislation. If the measures affect fishing vessels from other Member States, they must be notified to the Commission, to the Member States and to the Regional Advisory Councils concerned and must subsequently be confirmed by the Commission.

([1]) OJ L 358, 31.12.2002, p. 59.
([2]) OJ L 206, 22.7.1992, p. 7.

(7) On 13 May 2008 the Netherlands notified the measures it intends to take to the Commission, Belgium, Denmark, Germany and France, which are the Member States concerned by the measures, as well as to the North Sea Regional Advisory Council.

(8) The fisheries measures proposed by the Netherlands are the creation of a seabed protection area with restricted access for beam trawlers with tickler chains with an engine capacity greater than 260 hP (191 kW) and the creation of five rest zones located within the seabed conservation area within which most fishing is to be prohibited.

(9) Belgium and the North Sea Regional Advisory Council have submitted to the Commission their written comments on the notification.

(10) The measures proposed by the Netherlands are not discriminatory as they apply equally to all vessels operating within the area. They are intended to minimise the effect of fishing on the conservation of marine eco-systems and are to be applied within 12 nautical miles of the baselines. The Community has not adopted any measure addressing conservation or management specifically for that area.

(11) Those measures are compatible with the objectives set out in Article 2 of Regulation (EC) No 2371/2002, in particular with the precautionary approach to be followed in taking measures designed to protect and conserve living aquatic resources, and are no less stringent than the existing Community legislation,

HAS ADOPTED THIS DECISION:

Article 1

The measures proposed by the Netherlands for the conservation of marine eco-systems in the Voordelta area, as set out in Annexes I to III, are hereby confirmed.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 11 June 2008.

For the Commission

Joe BORG

Member of the Commission

ANNEX I

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

13 May 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 1998 ([1]) 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 in so far 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 that 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 mandate ([2]) in force at the Ministry of Agriculture, Nature and Food Quality stipulates that the Southern Regional Director for this ministry be authorised 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 the 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:

Organised canoe trips

A total of 10 organised canoe (kayak) trips are permitted in the period between 1 September and 1 May with a maximum of two such trips on any one day. The following additional conditions also apply:

— access is only permitted in a group (maximum 16 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. A distance of at least 250 m from resting seals must be observed,

— excursions must be registered with the Handhaving Voordelta registration centre at least 48 hours in advance (telephone number known to the above organisations).

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

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

Trawling

Trawling with an engine capacity of less than 191 kW (260 hp) is permitted between 1 September and 1 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 (1 May to 1 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.

Helicopter flights and recreational flights in small aircraft

Helicopter flights are permitted over this area above a minimum altitude of 1 000 ft (approx. 300 m).

Paragliding and hang gliding are expressly prohibited above this area.

For all other forms of recreational 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], applying to this category ([1]), which 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 2

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

Restricted access to Bollen van de Ooster applies throughout the whole of the year to the smaller summer resting area as indicated on the map. From 1 November to 1 April, restricted access applies to 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 a corridor

Navigation through the winter resting area via the designated corridor subject to a maximum speed of 7 knots (13 km/h). However, surfing and sailing through the corridor is prohibited.

Canoeing, windsurfing and surfing

Canoeing (kayaking), windsurfing and surfing in the north-eastern 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.

Helicopter flights and recreational flights in small aircraft

Helicopter flights are permitted over this area above a minimum altitude of 1 000 ft (approx. 300 m).

Paragliding and hang gliding are expressly prohibited above this area.

([1]) Code of Conduct Verantwoord Vliegen [Responsible Flying], Royal Netherlands Aeronautical Association (RNAA), 2004.

For all other forms of recreational 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], applying to this category, which 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 1 November to 1 May.

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

Helicopter flights and recreational flights in small aircraft

Helicopter flights are permitted over this area above a minimum altitude of 1 000 ft (approx. 300 m).

Paragliding and hang gliding are prohibited above this area.

For all other forms of recreational 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], applying to this category, which 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 to 3 do not apply to the following activities under Section 20, Subsection 4, 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, vehicle or aircraft, in so far 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 1 September and 1 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 'Toegangsbeperkingsbesluit Hinderplaat, Bollen van de Ooster en Bollen van het Nieuwe Zand' [access restriction decree, Hinderplaat, Bollen van de Ooster and Bollen van het Nieuwe Zand] 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.

3. Maps and other appendices as indicated in Subsection 1 can be viewed for inspection for a period of six weeks after publication, at the offices of the Southern Regional Affairs Directorate of the Ministry of Agriculture, Nature and Food Quality located at Keisersgracht 5 in Eindhoven. Office hours are from Monday to Friday, from 9 a.m. to 5 p.m.

Section 6

This decree is to be announced in the *Staatscourant* [Government Gazette]. An explanatory memorandum 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
Netherlands

Notices of objection should be signed and should include at least the following information:

(a) name and address of the party lodging the objection;

(b) date;

(c) description of the decree against which an objection is being lodged; and

(d) grounds for objection.

EXPLANATORY MEMORANDUM

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 established 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, Section 19d of the Nature Conservation Act 1998 remains fully applicable. This decree is only aimed at regulating access and restricting 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 Voordelta management plan) are the foundations for the access restriction decrees. They will also be incorporated into the Voordelta management plan. The goal of the management plan and of the access restriction decree is: to conserve the protected natural assets, to compensate for the loss of protected natural assets through the construction of Maasvlakte 2 and, within the bounds of this nature conservation, take into account the interests of recreational users, tourism and fisheries.

The management measures, such as the present access restrictions, will, if necessary, be adjusted on the basis of monitoring and evaluation.

Explanatory note on the 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 10 000 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 50 years ago. Over recent years, their numbers have grown to more than 100 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 1 May to 1 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 200 common seals to inhabit the entire Delta. Here, they will be able 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. Although the construction and presence of Maasvlakte 2 will have no significant impact on this species, the measures are in fact crucial given the very poor state of conservation throughout the country. For this reason access to the area directly to the 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, when the flight radius of these birds is limited by fledglings.

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 utilise the area better as a resting place for their young and to make it easier to reach food supplies at sea.

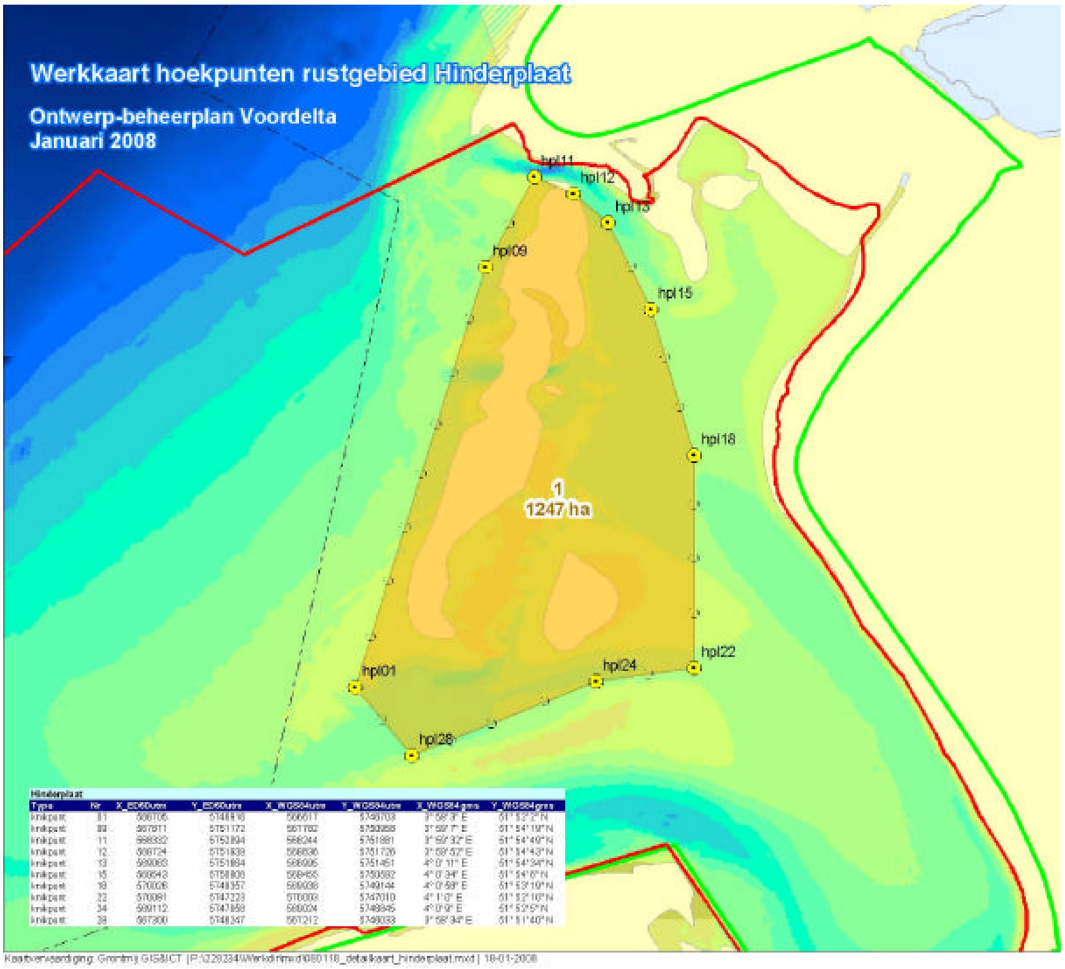
Common scoter

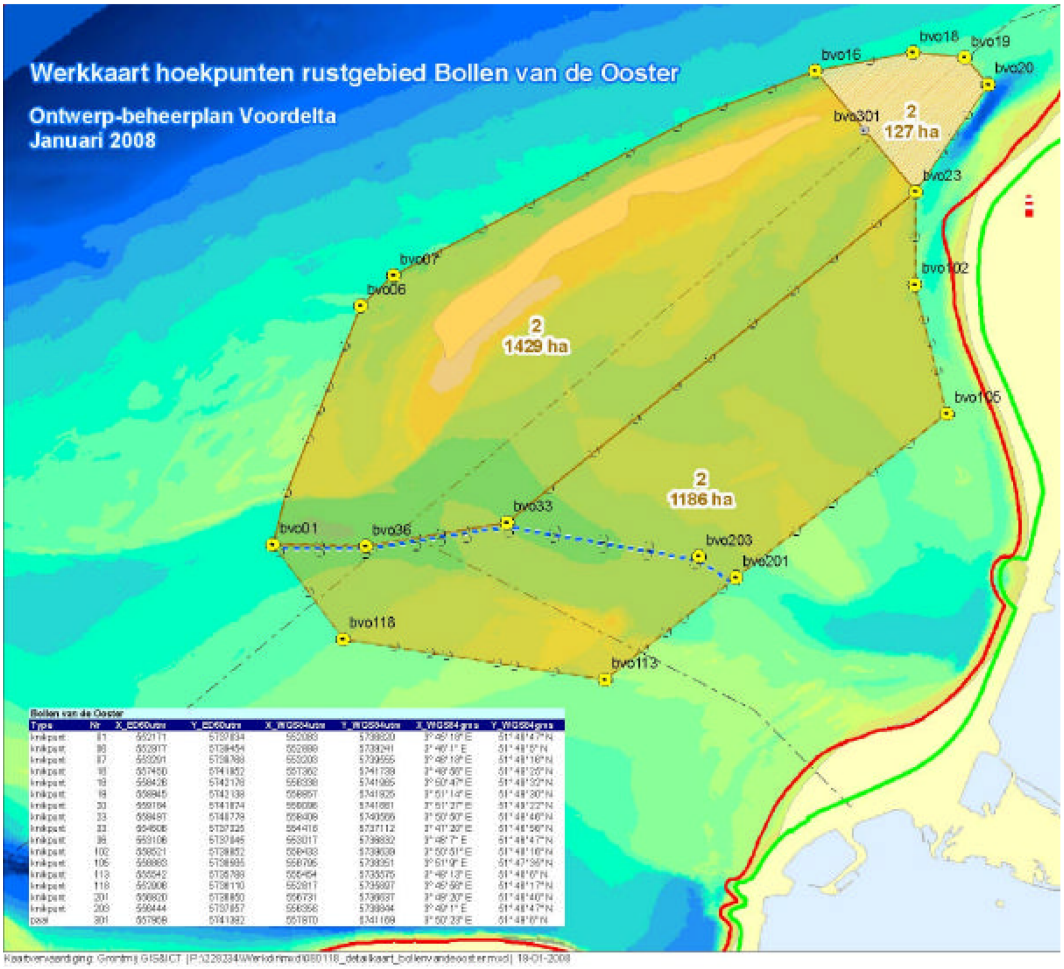
The common scoter is a migrant bird that visits the Voordelta in the winter months. This species can principally be found in coastal regions to the south-east of Bollen van de Ooster and in and around Bollen van het Nieuwe Zand. In the summer months, smaller numbers of common scoter remain in the Voordelta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

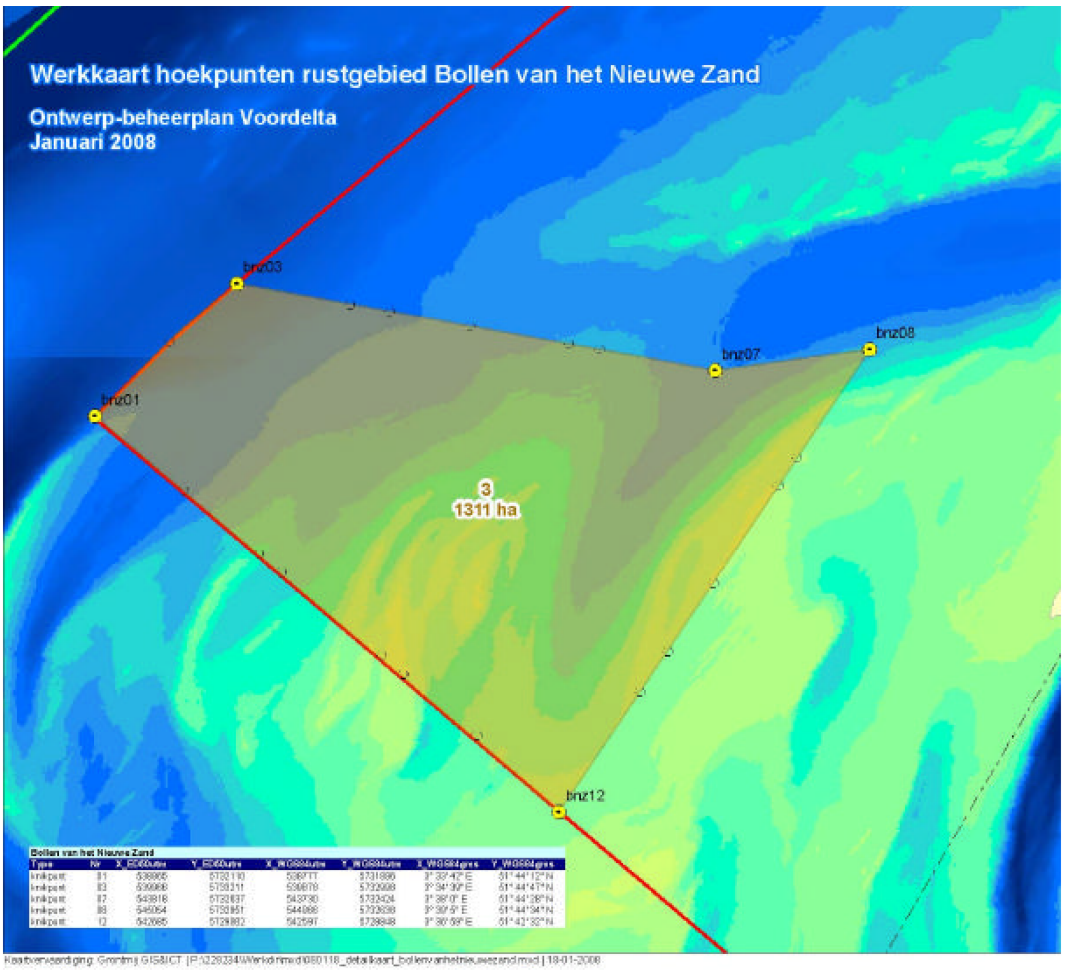
Common scoters feed on shellfish that they find in shallow coastal waters that will partially be lost due to the construction of Maasvlakte 2. Measures restricting access to coastal areas at Bollen van de Ooster (and Bollen van het Nieuwe Zand) are designed to safeguard adequate levels of and access 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.

MAPS




Werkkaart hoekpunten rustgebied Bollen van de Ooster
Ontwerp-beheerplan Voordelta
Januari 2008
bvo16
bvo18
bvo19
bvo20
bvo301
2
127 ha
bvo23
bvo07
bvo06
2
1429 ha
bvo102
bvo105
2
1186 ha
bvo33
bvo01
bvo36
bvo203
bvo201
bvo118
bvo113


Werkkaart hoekpunten rustgebied Bollen van het Nieuwe Zand
Ontwerp-beheerplan Voordelta
Januari 2008
brz03
brz07
brz08
brz01
3
1311 ha
brz12

ANNEX II

Access restriction decree seabed conservation area

13 May 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 1998 ([1]) 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 in so far 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 that 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 mandate ([2]) in force at the Ministry of Agriculture, Nature and Food Quality stipulates that the Southern Regional Director for this ministry be authorised 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 conservation area in the Voordelta, as shown on the map accompanying this decree, is to be restricted for beam trawling with an engine capacity greater than 191 kW (260 hp).

Restricted access applies throughout the whole of the year.

Section 2

1. The area to which access has been restricted by virtue of this decree is shown on the associated map titled 'Toegangsbeperkingsbesluit bodembeschermingsgebiet Voordelta' [access restriction decree — Voordelta seabed conservation area] and defined in detail by means of coordinates.

2. Maps and other appendices as indicated in Subsection 1 can be viewed for inspection for a period of six weeks after publication, at the offices of the Southern Regional Affairs Directorate of the Ministry of Agriculture, Nature and Food Quality located at Keisersgracht 5 in Eindhoven. Office hours are from Monday to Friday, from 9 a.m. to 5 p.m.

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

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

Section 3

This decree is to be announced in the *Staatscourant* [Government Gazette]. An explanatory memorandum 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
Netherlands

Notices of objection should be signed and should include at least the following information:

(a) name and address of the party lodging the objection;

(b) date;

(c) description of the decree against which an objection is being lodged; and

(d) grounds for objection.

EXPLANATORY MEMORANDUM

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 established 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 1 110 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, Section 19d of the Nature Conservation Act 1998 remains 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 Voordelta management plan) are the foundations for the access restriction decrees. They will also be incorporated in the Voordelta management plan. The goal of the management plan and of the access restriction decree is: to conserve the protected natural assets, to compensate for the loss of protected natural assets through the construction of Maasvlakte 2 and within the bounds of this nature conservation take into account the interests of recreational users, tourism and fisheries.

The management measures, such as the present access restrictions, will, if necessary, be adjusted on the basis of monitoring and evaluation.

Explanatory notes on access restrictions

Maasvlakte 2 Compensation

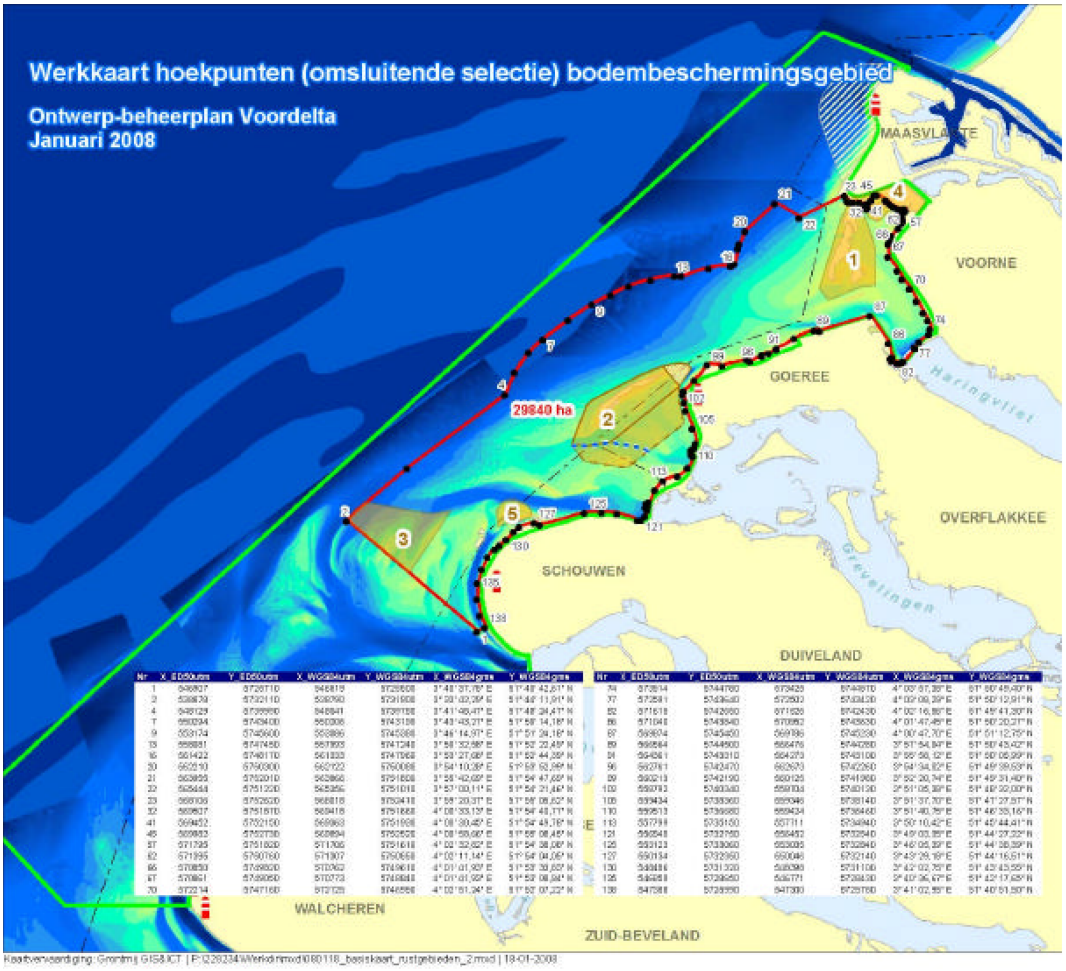
Habitat Type 1 110 (permanent sandbanks in shallow coastal waters)

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 them. 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, 10 times the area that will be lost. This factor of 10 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 this 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 shown that excluding beam trawlers with an engine capacity greater than 191 kW (260 hp) from the conservation area was sufficient to achieve this objective. The restricted access decree follows up on these findings.

MAP


Werkkaart hoekpunten (omsluitende selectie) bodembeschermingsgebied
Ontwerp-beheerplan Voordelta
Januari 2008
MAASVLAKTE
VOORNE
GOEREE
OVERFLAKKEE
SCHOUWEN
DUIVELAND
WALCHEREN
ZUID-BEVELAND
Haringvliet
Grevelingen
29840 ha
1
2
3
4
5

ANNEX III

Access restriction decree Verklikkerplaat and Slikken van Voorne

13 May 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 1998 ([1]) 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 in so far 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 that 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 mandate ([2]) in force at the Ministry of Agriculture, Nature and Food Quality stipulates that the Southern Regional Director for this ministry be authorised 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 memorandum accompanying this decree.

This decree specifically regulates access restrictions 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 'Verklikkerplaat' area, as shown in the map accompanying this decree, is to be restricted.

Restricted access to Verklikkerplaat applies throughout the whole of the year.

Restricted access applies to all types of activities with the exception of the activities listed below:

Helicopter flights and recreational flights in small aircraft

Helicopter flights are permitted over this area above a minimum altitude of 1 000 ft (approx. 300 m).

Paragliding and hang gliding are prohibited above this area.

For all other forms of recreational 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], applying to this category ([3]), which 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.

([1]) Effective as of *Staatsblad 2005* [Bulletin of Acts, Orders and Decrees 2005], 473.
([2]) *Staatscourant 2006* [Government Gazette 2006], No 91.
([3]) Code of Conduct Verantwoord Vliegen [Responsible Flying], Royal Netherlands Aeronautical Association (RNAA), 2004.

Section 2

Access to the 'Slikken van Voorne' area, located within the Voordelta as shown on the map accompanying this decree, is to be restricted.

Restricted access to Slikken van Voorne applies throughout the whole of the year.

Restricted access does not apply to the activities listed below:

Seine net fishing

Seine net fishing is permitted throughout the whole of the year under the following conditions. This concerns one enterprise, namely vessel Tholen 5.

A distance of at least 250 m must be kept from high water refuge areas on mud flats.

The fishing vessel must be equipped with serviceable tracking equipment for enforcement purposes.

Helicopter flights and recreational flights in small aircraft

Helicopter flights are permitted over this area above a minimum altitude of 1 000 ft (approx. 300 m).

Paragliding and hang gliding are expressly prohibited above this area.

For all other forms of recreational 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], applying to this category, which 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 restrictions described above in Section 1 do not apply to the following activities on grounds of Section 20, Subsection 4 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, vehicle or aircraft, in so far 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 1 September and 1 May. Access outside this period is only permitted as a matter of urgent necessity subject to the discretion of the competent authority.

Section 4

1. Areas to which access has been restricted by virtue of this decree are shown on the associated map titled 'Toegangelijkheidsbesluit Verklikkerplaat en Slikken van Voorne' [access restriction decree Verklikkerplaat en Slikken van Voorne] 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.

3. Maps and other appendices as indicated in Subsection 1 can be viewed for inspection for a period of six weeks after publication, at the offices of the Southern Regional Affairs Directorate of the Ministry of Agriculture, Nature and Food Quality located at Keisersgracht 5 in Eindhoven. Office hours are from Monday to Friday, from 9 a.m. to 5 p.m.

Section 5

This decree is to be announced in the *Staatscourant* [Government Gazette]. An explanatory memorandum 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
Netherlands

Notices of objection should be signed and should include at least the following information:

(a) name and address of the party lodging the objection;

(b) date;

(c) description of the decree against which an objection is being lodged; and

(d) grounds for objection.

EXPLANATORY MEMORANDUM

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 established 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), *Main Port Rotterdam Development 2006*, stipulated that this loss be compensated for 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 1 110 and a number of species of bird. By means of the restricted access decree under consideration, compensatory measures are to be taken in addition to objectives set by Natura 2000.

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, Section 19d of the Nature Conservation Act 1998 remains fully applicable. This decree is only aimed at regulating access and restricting 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 Voordelta management plan) are the foundations for the access restriction decrees. They will also be incorporated into the Voordelta management plan. The goal of the management plan and of the access restriction decree is: to conserve the protected natural assets, to compensate for the loss of protected natural assets through the construction of Maasvlakte 2 and, within the bounds of this nature conservation, to take into account the interests of recreational users, tourism and fisheries.

The management measures, such as the present access restrictions, will, if necessary, be adjusted on the basis of monitoring and evaluation.

Explanatory notes on access restrictions

Slikken van Voorne is important for the protection of various species of bird inhabiting the area (approximately 20 species, principally ducks and waders) for which conservation targets have been set in the Voordelta Designation Decree.

Verklikkerplaat is of special importance for the protection of the common seal.

Natura 2000 Objectives

Waders and ducks

Various species of wader and duck such as the oystercatcher and the gadwall use Slikken van Voorne in the Voordelta as a resting and foraging area. The Voordelta is becoming increasingly important for their continued existence as a result of diminishing habitats elsewhere, such as the sandbanks of the Oosterschelde where these migrant birds rest and feed.

Recreational activities in their direct vicinity, both on beaches and on the water, disturb these birds, which are particularly sensitive to noise and sudden movement. This problem is growing, as the recreational season is becoming longer and longer. Measures restricting access to Slikken van Voorne are designed to achieve conservation targets set out in the Voordelta Designation Decree for ducks and waders.

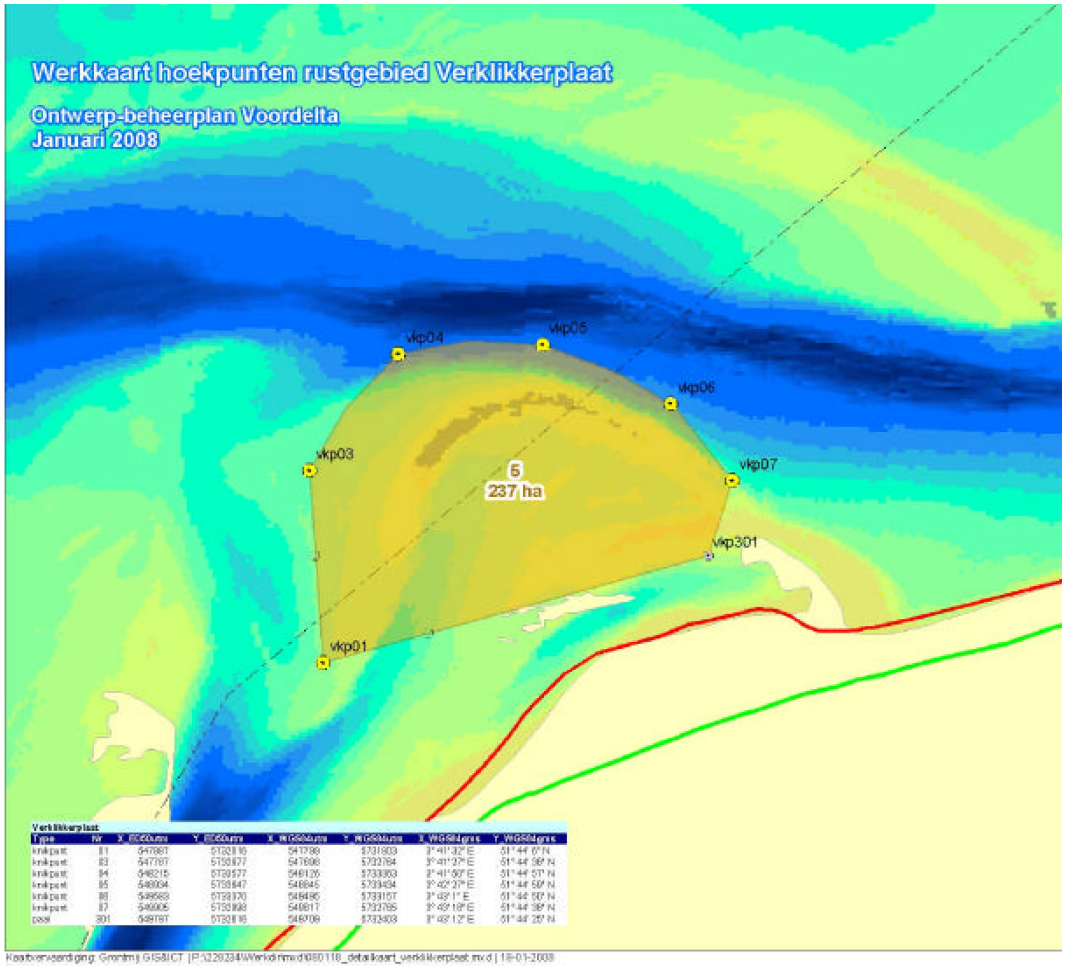
Common seal

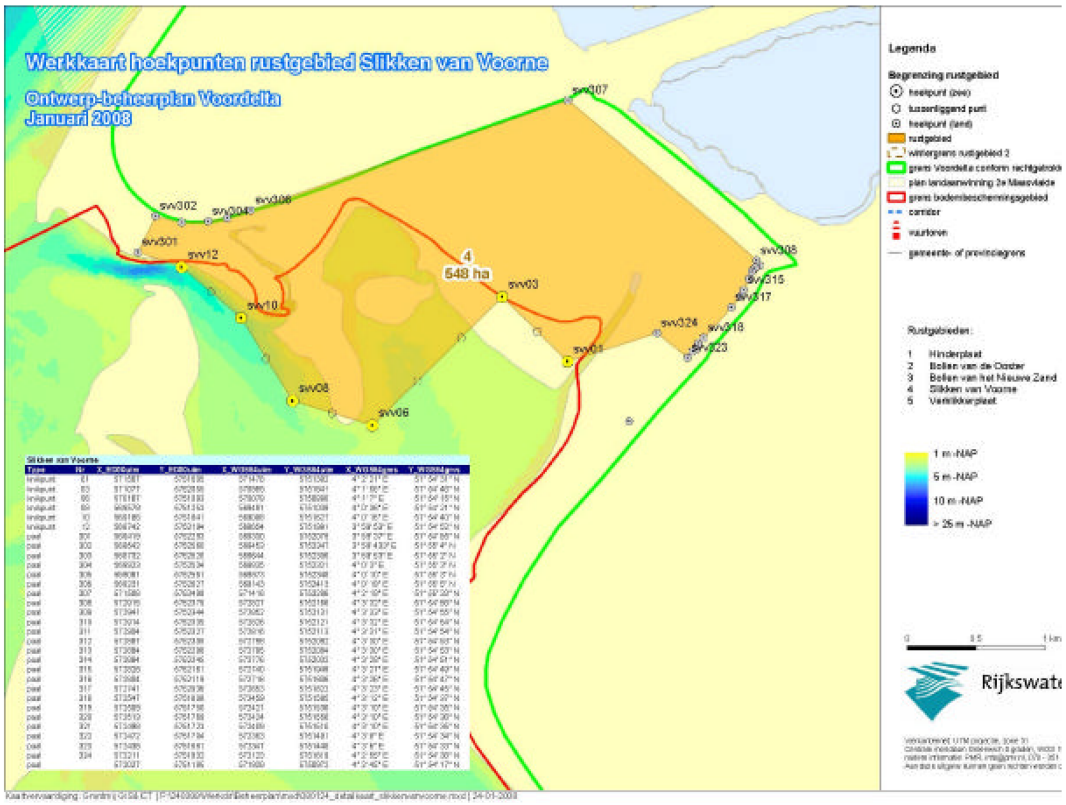
At the beginning of the last century, around 10 000 common seals inhabited the Delta. Pollution, hunting and encroachment into their habitat due to the Delta Works had reduced their numbers to just a few dozen individuals up until 50 years ago. Over recent years, their numbers have grown to more than 100 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 1 May to 1 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 200 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.

MAPS


Werkkaart hoekpunten rustgebied Verklikkerplaat
Ontwerp-beheerplan Voordelta
Januari 2008
vkp04
vkp05
vkp06
vkp03
vkp07
5
237 ha
vkp301
vkp01


Werkkaart hoekpunten rustgebied Slikken van Voorne
Ontwerp-beheerplan Voordelta
Januari 2008
svv307
svv302
svv304
svv306
svv301
svv12
4
548 ha
svv03
svv10
svv308
svv315
svv317
svv324
svv318
svv323
svv01
svv08
svv06
Legenda
Begrenzing rustgebied
Rustgebieden:
1 Hinderplaat
2 Bollen van de Dorter
3 Bollen van het Nieuwe Zand
4 Slikken van Voorne
5 Verklikkerplaat
1 m -NAP
5 m -NAP
10 m -NAP
> 25 m -NAP