

# **The governance of nature**

How nature conservation ambitions have been dashed in planning practices

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# **The governance of nature**

How nature conservation ambitions have been dashed in planning  
practices

Raoul Beunen

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## **Preface**

In this book I present my reflections on the implementation of nature conservation policies in various planning practices. I consider myself to be privileged with the fact that I was able to work on this research project. At the time I started to work at the university of Wageningen in 2001 I would never have foreseen that one day I would defend my PhD thesis. Only after I presented my first ideas about the implementation of the Birds and Habitats Directive at the AESOP conference in Vienna in 2005 I started to realise that such scientific reflections are not only interesting, but also necessary to improve nature conservation.

First of all I would like to thank Rinus Jaarsma for offering me a job at the university and giving me the freedom to work on this study. From the beginning on he tried to convince me that I should start to work on a PhD thesis. I am also indebted to Kristof van Assche. He showed me that conducting research can be fun and he taught me about the books, authors and theories that form the basis of this thesis. I am pretty sure that without him I possibly would have never started this PhD project and for sure I would have never finished it. The same is true for Ronald van Ark. Since the moment we first met in 1994 we have worked together, shared ideas and criticised each others work. Together we have developed many of the ideas and recommendations that are presented in this book. His devotion to perfectionism greatly enriched my work. I also want to thank Martijn Duineveld, Janneke Hagens, Terry van Dijk and Jasper de Vries with whom I collaborated on various parts of this study. I really appreciated all the interesting and wonderful discussions and brainstorm we had and greatly enjoyed the field trips to England and Scotland! I hope we can continue these fruitful collaborations in the future.

I am also grateful to the many people with whom I worked together in the past years, including all my current and past colleagues. In particular I like to mention Irene Bouwma for providing me the opportunity to join the Natura 2000 Benchmark team and to do a case study in England. This trip proved to be very interesting and the lessons we learned created some new perspectives upon the practices we studied in the Netherlands. Special attention also needs to be given to all the students that I supervised during their various research projects on nature conservation policies. Probably I learned as much as they did from all these projects. In particular I would like to mention Thijs Sanderink and Irene Veerbeek, whose master theses helped to focus my own research and to enrich my research findings.

I am also grateful to all the people that discussed their ideas about the implementation of nature conservation policies with me during projects, conferences, meetings, information evenings and interviews. I hope that my reflections on this subject help them to gain a better understanding of the planning practices they are part of and

that this offers them possibilities to deal with the difficulties and uncertainties they face when they want to realise their ambitions. In the end it are the effects of their work that determine whether ambitions to protect biodiversity will be successful.

Finally I would like to thank Marije for her patient contributions to the final editing of this book and for providing the wonderful pictures that show some of the reasons why we should protect biodiversity.

Raoul Beunen



# Chapter 1

## Introduction





*In 2007 Donald et al. presented an evaluation of the Birds Directive in the United Kingdom. They reported evidence of positive population changes in species that were covered by the Birds Directive and used this evidence to suggest that supranational conservation policy can bring measurable conservation benefits. In doing so, they assumed a causal link between a policy and spatial effects. In fact, however, the events that take place between the formulation of a policy and the effects measured later on remain a black box. Are the changes in bird populations indeed a direct result of the Birds Directive, and if so, to what extent and in what way? Or are there other factors that explain the population changes? The aim of this book is to open this black box and to show what happens after a conservation policy is formulated. This book provides additional insights into the implementation of conservation policies and presents some recommendations for the design and implementation of these policies.*

## **Introduction**

All over the world biodiversity is under threat, and more and more species are facing extinction (Jenkins, 2003; Brooks et al., 2002; Myers et al., 2000; Pimm et al., 1995). Worldwide, 21% of all mammals, 12% of birds and 30% of amphibians are classified as threatened by the IUCN (IUCN, 2008). Other groups of organisms have only been partly evaluated on a global scale, and it is therefore impossible to make general conclusions. However, more information is available on biodiversity in the European Union, and the results are worrying. Surveys show a decline in both the variety and extent of natural systems and of biodiversity (Secretariat of the Convention on Biological Diversity, 2006). At the species level, 42% of Europe's native mammals, 43% of birds, 45% of butterflies, 30% of amphibians, 45% of reptiles and 52% of freshwater fish are threatened with extinction (CEC, 2006; Temple & Terry, 2007; Birdlife International, 2004). Some 800 plant species face a similar fate. In addition, the populations of many common species are declining (CEC, 2006).

The European Union has selected more than 1,000 species and 216 habitats of 'European interest' as being important for the continent's biodiversity. An assessment of the conservation status of these species and habitats that was published in 2007 showed that less than half of the species and habitat types of European interest had favourable conservation status, and that the conservation status of many of the remaining species and habitats was unfavourable-inadequate or unfavourable-bad (EEA, 2008; Spyropoulou, 2008). The status of biodiversity in the Netherlands is no exception. A recent evaluation showed that many species face extinction if no further action is taken (PBL, 2008; Bouwma et al., 2009).

The situations differ between groups of organisms and between species. Large differences were observed in the changes in diversity between bird species in the

Netherlands. For example, the populations of 30% of breeding birds increased in the period between 1973-1977 and 1998-2000, but about 32% of the species declined in the same period (SOVON Vogelonderzoek Nederland, 2002). Critical species are disappearing, while generalist ones are increasing. The distribution of critical species in the Netherlands has been sharply reduced. Species that used to be fairly common in the 1970s, like Garganey (*Anas querquedula*), Grey Partridge (*Perdix perdix*), Common Snipe (*Gallinago gallinago*), Redshank (*Tringa tetanus*), Whincat (*Saxicola rubetra*) and Corn Bunting (*Miliaria calandra*), declined severely (ibid.). Species like Short-eared Owl (*Asio flammeus*), Wryneck (*Jynx torquilla*), Tawny Pipit (*Anthus campestris*), Greater Grey Shrike (*Lanius excubitor*), Wheatear (*Oenanthe oenanthe*) and Ortolan Bunting (*Emberiza hortulana*) have disappeared almost entirely as breeding birds in the Netherlands. Butterflies are also threatened in the Netherlands (Bos et al., 2006): 17 species (24%) have become extinct since 1940. Other species of butterfly have become rare, and 70% of all butterfly species are now on the red list of threatened species. Moreover, the diversity of butterflies has decreased severely in many areas because even common species have disappeared from many locations. Butterflies have shown such dramatic losses because they, more than other animals, are vulnerable to changes in land use (Bos et al., 2006). Dragonflies are doing a little better: although 18 species have declined severely in the past century, most species have remained stable, and some have increased (Nederlandse Vereniging voor Libellenstudie, 2002).

Periodic evaluations of biodiversity and environmental conditions conducted by the Netherlands Environmental Assessment Agency have shown that the quality of the environment in the Netherlands is not sufficient to protect biodiversity, and that the situation is not improving (PBL, 2008; Milieu- en natuurplanbureau, 2006). Despite all efforts, more and more species are therefore becoming threatened.

Human activities are the main cause of this decline in biodiversity (Jenkins, 2003). Much has been written about the effects of land-use changes, habitat destruction, degradation and fragmentation on biodiversity (e.g. Langevelde et al., 2009; Hanski, 2005; Forman et al., 2003; Fahrig, 1997). Loreau et al. (2006) argue that the biodiversity crisis presents a very complex challenge that requires much more attention in both science and politics. Decisions that affect biodiversity conservation are made at multiple levels, from the European Union to local authorities that decide on land use and development projects. A complex multilayered network of actors and institutions is involved in the protection of biodiversity (Escobar, 1998). Governments at different policy levels all over the world have formulated policies and legislation to protect flora and fauna. The Member States of the European Union, for example, have agreed to halt the decline of biodiversity in the EU by 2010 (European Council, 2001). The Birds and Habitats Directives are the most important means for conservation at the European level,

but there are several other agreements, like the Bern Convention and the Ramsar Convention, which emphasise the importance of biodiversity conservation.

Dutch authorities, researchers and conservation organisations have actively contributed to the formulation of these international policies and agreements and are in the forefront of promoting conservation initiatives. The Netherlands is therefore an interesting country to study the effect of these policies. Nature conservation in the Netherlands has a long tradition that started in the early 1900s (Van der Windt, 1995; Van Loon et al., 1996). Since the first initiatives, many areas have been designated, purchased and managed as protected areas, and various conservation organisations have been founded. In 1990, an ambitious policy to improve the quantity and quality of nature in the Netherlands was approved. This nature conservation policy included the ambition to create a network of existing and new nature areas (the National Ecological Network). Despite all these national and international efforts, some which have been successful, biodiversity is still threatened. The Netherlands Environmental Assessment Agency has concluded that it is unlikely that the objectives of Dutch and European conservation policies to stop biodiversity loss in 2010 will be met (PBL, 2008). Although the acreage of nature conservation areas in the Netherlands has increased in the past century, the quality of these areas is not sufficient to prevent further loss of biodiversity. The red list of threatened species has grown, and the populations of the most endangered species continue to decline. At the European level, the pace and extent of biodiversity conservation has also been insufficient (CEC, 2006). The problematic implementation of nature conservation policies, the difficult enforcement of conservation laws, and the growing opposition against these laws and policies have resulted in an urgent need for a debate about the efficiency of national and international nature conservation policies.

Scientific research can contribute to this debate. Many authors have emphasised the importance of science-policy interfaces in environmental governance (cf. Van den Hove, 2007). These interfaces should increase the information flow between scientists and policy makers. Researchers can contribute in many ways to understanding ecosystems and the relationship between land use and conservation objectives, and they can create predictive models that can be used to assess the effects of plans and policies. But scientist can also contribute to provide further insights into the formulation and implementation of conservation policies. Researchers can study the constitution and use of conservation policies in planning and decision-making practices, the effects of these policies on land use, and they can study how knowledge is constructed and used in policy processes. Such research provides further insight into the processes at hand in science, in policy and at science-policy interfaces (Van den Hove, 2007). These insights can help policy formulators and implementers, planning professionals and conservationists to improve the success of their activities. This study contributes to the understanding of the

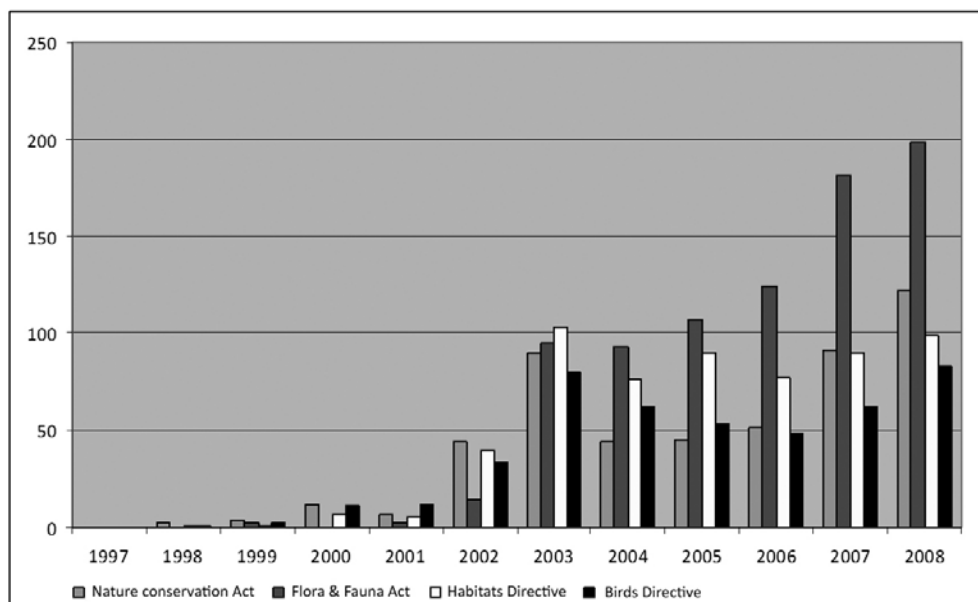
governance of nature by illuminating the relationships between nature conservation policies and land use.

### **The implementation of the Birds and Habitats Directives in the Netherlands**

My attention was drawn to the Birds and Habitats Directives during a project we worked on in 2001. In this project we had to review an assessment that had been made for a new road through a protected dune area. The assessment discussed the necessity of the road and the possible effects of the road and its traffic on the environment. One of the protection regimes that had to be taken into account for this assessment was the designation of the area as a Natura 2000 site under the Habitats Directive. For our project, we needed to know more about this protection. For example, we needed to know which species and habitats the area was designated to protect, the location of these species and habitats in the protected area, and how the requirements of this European directive could be complied with in the decision-making process. We tried to get this information from the local and regional authorities and from the Ministry of Agriculture, Nature and Food Quality, but this proved to be a difficult task. What surprised me at that time was the fact that most of the people we spoke with had little knowledge of the Birds and Habitats Directives and their implications for the planning and decision-making process. I decided to study the Habitats Directive in more detail and discovered that it was not so new at all. The Habitats Directive was formally approved in 1992 and the Birds Directive was even older – from 1979. The directives also did not seem to be very complicated. Both directives provided a very precise description of the procedures that must be followed during the decision-making process. This made me wonder why there was so little information about the protected species and designated areas and about the consequences of these directives for decision making.

My study started with a literature review of the articles (both professional and scientific) that had been written about the Birds and Habitats Directives. Most of these articles described how the directives had been formulated, how the Member States had implemented them in their national policies, or they discussed the ecological aspects of the directives. Although these articles were interesting to read, none of them provided a direct answer to the questions that we faced during our project, which were also the questions that many people involved in all kinds of spatial projects and activities wanted to get answered. **But how can we expect positive results from European directives when the majority of professionals that prepare or make decisions that could affect conservation objectives do not even know that these directives exist or how these directives should be incorporated in the decision-making processes?**

The Birds and Habitats Directives gained a great deal of attention in the Netherlands after Das & Boom, a nature conservation organisation, successfully used the Habitats Directive to take legal action against the development of a new business park in the town of Heerlen. They won the lawsuit. Several organisations and people successfully followed the example of Das & Boom and started to use the European directives to take legal action against plans and projects. Famous examples of projects that faced lawsuits were the construction of the A73 motorway and cockle fishing in the Wadden Sea. Many of the decisions about these plans and projects were overturned in court as result of the lawsuit. Not surprisingly, the number of court cases in which the Birds Directive or the Habitats Directive was mentioned increased greatly (Figure 1-1). At that time, no one seemed to know what to do or how to deal with these directives. All these protests and lawsuits drew the attention of the media. Many newspapers and professional journals published articles about both directives and their implications for planning practices.



**Figure 1-1.** Annual number of law-suits in which different nature conservation laws are mentioned.

If we look at what happened after all these projects were cancelled due to court rulings, we see that most of them actually continued in the long run. This shows that the impact of the Birds and Habitats Directives on land use was not so enormous after all, and it raises some questions about the reasons for all the temporary delays caused by court cases. A study of the case law showed that most policy decisions had been overturned in court because the initial decision-making process paid little or no attention to the Birds and Habitats Directives. In other words, the policy makers did not follow the correct procedures. Precisely for that reason, all these decisions could be successfully contested

in court, since the judges mainly looked at whether the correct procedures were followed. After a while, most people and organisations learned to deal with the directives and learned what they had to do in order to avoid legal cases. Nevertheless, the lawsuits, the uncertainties about the consequences of both directives – and especially the publicity that was given to these directives – led to growing opposition against the directives. This opposition came mainly from project developers and local, regional and even national authorities who feared restrictions for their plans and projects.

What at first seemed to be a success for the protection of biodiversity, is looking more and more like a Pyrrhic victory. Despite all efforts, species and habitats are still declining (Notenboom et al., 2006; PBL, 2008). **Why did the European nature conservation policies, which caused so many problems and discussions, ultimately have little effect on land-use activities and on the protection of biodiversity?**

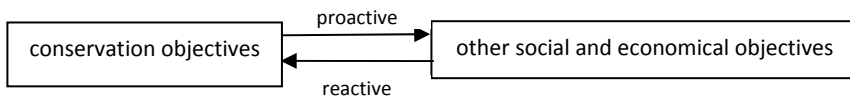
### **Aim of this research project**

Many studies have shown that the implementation of nature conservation policies took much longer than planned, that they cause many discussions and conflicts, and that policy aims are only partly met (Ostermann, 1998; Coffey & Richartz, 2003; Notenboom et al., 2006; Bennet & Ligthart, 2001). This research project aims to provide a better understanding of the implementation of nature conservation policies and the relationship between these nature conservation policies and planning practices. The objective of this research project is to analyse how nature conservation policies affect planning and decision-making processes and their outcomes and to reflect critically on the implementation of nature conservation policies in the Netherlands. This book combines theoretical and empirical reflections on the implementation of these policies. Finally, the reflections will be used to provide realistic recommendations for the people who design, implement and use nature conservation policies.

### **Nature conservation policies**

Nature conservation policies deal with the relationships between conservation objectives and other social and economic objectives. The designation and management of protected areas is an important aim of conservation policies. The protection of these designated sites can have consequences for social and economic activities in and near these protected areas. On the other hand, social and economic activities can also affect the conservation objectives. The conservation policies (together with other policies and laws) establish a framework for the planning and decision-making processes within which the various objectives are considered in relation to each other (Figure 1-2).





**Figure 1-2.** Proactive and reactive objectives of nature conservation policies

We can distinguish between proactive objectives and reactive objectives of conservation policies. Proactive objectives imply that areas are managed, areas are restored, new nature areas are created and ecological networks are developed. This includes the maintenance and enlargement of protected areas. All these conservation objectives could affect other social and economic objectives and require careful planning and decision making. Visions, ideas and concepts are often used to illustrate the proactive conservation ideas. A famous example is the ecological network, a concept that promotes the relationships between different areas and that is widely used to create networks of protected areas. This network concept is the central theme of the Dutch nature conservation policy (EHS), and is also used in the Birds and Habitats Directives, which aim to create the Natura 2000 network.

The reactive objective of conservation policies is to offer legal protection for areas and species. There are many international, national, regional and local policies and laws that offer legislative frameworks for biodiversity protection. These policies (including laws) provide a framework which can be used to weigh social and economic objectives against conservation objectives. These frameworks provide guidelines which help decision makers to determine whether activities can be permitted or forbidden, and they often include specific criteria that a plan or project must comply with to be permitted. These frameworks usually have a legal status, which can be used by the courts to assess whether decisions meet the criteria provided by the conservation policies. Article 6 of the Birds and Habitats Directives is a well-known and important example of such a framework that plays an important role in many decision-making processes.

### **Nature conservation, implementation studies and planning practices**

In order to understand the implementation of nature conservation policies, we need to know why people formulate and use these policies. Nature conservation can be traced back to the end of the nineteenth century (Reid, 1997; Rootes, 2007; Van der Windt, 1995). At that time a growing number of people started to consider the changes in the physical environment that were caused by human activities as something negative (Glacken, 1967). They worried for example, about the clearing of forests, the diminishing of birds and the degradation of natural beauty (ibid.). In our current society people have various reasons to protect nature and the formulation of nature conservation policies is one of the means they use to pursue this protection. Nature conservation is a human

ambition and we should be aware that people have multiple perspectives on what should be protected. Nature is a social construct and that there are many of them: natures (Descola, 1996). Tracy Metz's explorations towards the concept of new nature in the Netherlands give a nice overview of the multiple perspectives on nature (Metz, 1998). Several authors have shown that these multiple images of nature are poorly reflected in nature conservation policies and that this is an important reason for the problematic implementation of this policies (Aarts, 1998; Groote et al, 2006; Dovendan et al, 2007; Van der Heijden, 2005). These notions should be taken into account when we study how nature and nature conservation policies are constituted in planning and decision-making practices (cf. Young et al., 2005; Aarts, 1998; Rientjes, 2002; Ellis & Waterton; Hornborg, 1996).

Planning and decision-making practices can be seen as political games in which people with different ideas, perspectives and objectives compete about space (e.g. Duineveld, 2006; Van Assche, 2004; Hillier, 2003; Flyvbjerg, 1998; Flyvbjerg & Richardson, 2002). Spatial planning, policy implementation and decision making are negotiation processes, conducted not only between governments and third parties, but increasingly between the various tiers of government (De Roo, 1999; Hajer & Wagenaar, 2003; Hajer, 2003). Accordingly, we should shift our attention from the organisation of government competencies and policy tools and measures, known collectively as 'government', to less formalised practises of 'governance' (Healy, 1997; Hajer & Zonneveld, 2000; Janssens & Van Tatenhove, 2000; Rhodes, 1997). Governance refers to the various ways in which public and private actors, both individuals and organisations, manage their common affairs. Governance theories give us a more realistic perspective on the roles that governments and their policies play in society (Pierre & Peters, 2000; Pierre, 2000; Bevir, 2004; Hajer, 2006).

These theories make us aware that governments depend on other societal actors. Their role is shifting from a role based on constitutional powers towards a role based on coordination and fusion of public and private resources (Pierre & Peters, 2000; Jordan et al, 2005). This does not mean that there is now governance instead of a government. The form of governance has changed, as well as the role of governmental organisations. The question is whether these changes are as far-reaching as some people describe them. It is easy to overestimate the capacity of governments in former times to govern with more or less absolute control, but is just as easy to underestimate the role governments play in current society (Pierre & Peters, 2000). The most important change is found in the ways in which the roles of governmental organisations are analysed and described. Government cannot be (and has never been) the sole actor that determines society. Governmental organisations have always depended on other actors. Top-down policies have never worked – and will never work – in the instrumental, rational action way some

people assume they have to work. We should therefore develop new perspectives on policy implementation, with more awareness of the relational perspective, in which different actors together determine actions and decisions (Van Ark, 2005; Goodwin, 1998; Jones & Burgess, 2005; Rydin & Pennington, 2000). Implementation is affected by a mix of situational, psychological and sociological factors that deserve much more attention from policy makers and researchers alike (Ducros & Watson, 2002). With these insights, we can reflect on the implementation of nature conservation policies from a different perspective.

The focus of planning studies should be on 'what is actually done' as opposed to 'what should be done'. With such focus we can improve our understanding of planning and implementation processes and the strategies and tactics that are used by the people involved in these processes (cf. Van Assche, 2004; Van Assche et al., 2009; Hillier, 2002; Flyvbjerg, 1998). This brings us to Machiavelli. Machiavelli is often criticised because of his ideas about political games. Unfortunately this criticism disregards the most important messages that can be found in his book *Il Principe*. In this book, Machiavelli did not present his own ideals about politics, but he made it clear that political games are played. He showed us that we have to look at what he called practical realities if we are to understand these political games:

*"For many authors have constructed imaginary republics and principalities that have never existed in practice and never could; for the gap between how people actually behave and how they ought to behave is so great that anyone who ignores everyday reality in order to live up to an ideal will soon discover he has been taught how to destroy himself, not how to preserve himself. For anyone who wants to act the part of a good man in all circumstances will bring about his own ruin, for those he has to deal with will not all be good. ...Let us leave to one side, then, all discussion of imaginary rulers and talk about practical realities". (Machiavelli, 1988)*

For the purposes of the present study, the practical realities he refers to are the various planning and decision-making practices in which nature conservation policies play a role. Following his reasoning, we will study these practices and pay specific attention to the ways in which nature conservation policies, together with all kinds of other aspects, influence the actions and decisions of people, and therewith the organisation and use of the environment. Following his reasoning, researchers should take an amoral approach. This implies that a researcher leaves his or her moral framework out of the research and tries to describe practices in a realistic way. In our case this implies that we should not study the implementation of nature conservation policies from a perspective that these policies are necessary and good or that they should be implemented according plan, but instead study which approaches there are to good policy making, implementation, planning and decision making.

## **Methodological framework**

To understand the governance of nature, we need to study how people constitute and deal with nature and nature conservation in planning and decision-making processes. This research focuses on the political struggles that continue when nature conservation policies are implemented. Planning research can offer a realistic perspective on the daily practices of planning and decision making in which nature conservation policies are used and provide insight into the political implications of these policies (cf. Wildavsky, 1979; Fischer, 2003).

The central theme of the studies that are presented in this book is the social working of nature conservation policy. People actively construct meaning of policy documents and of acts and decisions of other people (Yanow, 1993; 1996; Barnes & Duncan, 1992). In order to understand policy implementation, we should study how people interpret and apply policies in a specific context. Diverse theories emphasise the social construction of meaning and show that the behaviour of people (for example the interpretation and application of policies) is shaped by the social structures they are part of. All actions, objects, and practices are socially meaningful, and these meanings are shaped by the social and political struggles in specific historical periods (Herrnstein-Smith, 2005; Latour, 1996; 2004; Barnes & Duncan, 1992). The interdependence between social structures and human behaviour can be conceptualised in various ways (see e.g. Hillier 2002 for an extensive elaboration). The concept of discourse is often used in the social sciences. Discourse can be defined as a 'frame of collectively conscious and subconscious elements present in a certain culture at a certain time determining interpretation of things there and then' (Van Assche, 2004, p. 54). Discourse analysis emphasises that everyday perception and understanding are always shaped by a pre-existing encyclopaedia of cultural organisation and classification (Hajer, 1995; Fischer, 2003). Similar conclusions were made by Maturana and Varela, who explored the biological roots of human understanding (1998). They also explained how our reality is mutually constructed and how language gives rise to mind, consciousness and self-awareness. The studies that are presented in this book are grounded in these valuable insights into human understanding and human behaviour. Interpretive and discursive techniques were used to show the social construction of 'facts' and their subjective interpretations and to describe and explain the mechanisms underlying political and social phenomena (Fischer, 2003; Yanow, 1996; Latour, 2004; Van Assche, 2007).

For this research we used a bottom-up approach to study the implementation of conservation policies (cf. Hill & Hupe, 2002, 2009; Adger et al, 2003; Hajer & Wagenaar, 2003). We began by studying the local and regional planning practices in which conservation policies played a role. The findings of these grassroots-level studies were

used to reflect on the implementation processes. Empirical descriptions were combined with theoretical analyses to offer additional insight into the relationship between nature conservation policies and land use. For a detailed overview of the research methods, we refer to the different studies that are presented in the following chapters.

The relevance of this research project is not limited to the domain of nature conservation. The insights are highly relevant for spatial planning and are useful for many other policy domains with a spatial dimension. Research projects that have this struggle as a central theme are becoming more and more important because they offer a realistic perspective on the daily practices of planning and decision making (Duineveld et al., 2007; Hillier, 2002; Flyvberg, 1998). With such studies we will be able to formulate realistic recommendations for the people who design, implement and use policies. A focus on the political struggle also offers greater insight into the political implications of different policies. This is indispensable input for the debates about government, governance and the role of law and policy in our society.

### **Structure of this book**

This book comprises six articles that all deal with the implementation of nature conservation policies. These articles were written as independent publications for various journals; consequently, some overlap between them in the description of the research context could not be avoided. The articles present various empirical studies on the implementation of nature conservation laws, spatial concepts, management plans and on the organisation of the planning and decision-making processes. These empirical studies were used for theoretical reflections on the divergence and convergence of policy meanings and on the relationship between laws and land use, which are presented in separate articles.



# Chapter 2

European Nature conservation  
legislation & spatial planning:  
for better or for worse?



The implementation of the Birds and Habitats Directive has been problematic in many member states of the European Union. In the Netherlands, many decision-making processes have ended in judicial intervention. This paper analyses the problematic implementation of both directives in the Netherlands. It shows that nature conservation legislation has gained importance in decision-making processes, but that this does not automatically mean that nature conservation goals have been achieved. Due to the emphasis that is placed on the procedural aspects of decision making, the costs involved have increased, while the substantial goals of the European Birds and Habitats Directive are fading into the background.

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## Introduction

With the formulation of the EU Birds Directive (79/409/EEC) and the EU Habitats Directive (92/43/EEC), the conservation of natural habitats and wild fauna and flora became an essential objective of the European Union. The Birds Directive was adopted in 1979 in order to protect all wild bird species and their natural habitats in the Member States of the EU. The Habitats Directive was adopted in 1992 with a similar aim: the conservation of biodiversity and of endangered flora and fauna in particular. Together, these directives aim to create a European ecological network of protected areas, called Natura 2000. Member States are required to select and designate Special Areas of Conservation (SACs) under the Habitats Directive and Special Protection Areas (SPAs) under the Birds Directive. The basis for this selection should be criteria given in both directives, together with relevant scientific information. Once sites are designated, the law applies, as formulated in article 6 of the Habitats Directive. Additional to the designation of sites, Member States are expected to implement the laws, regulations and administrative provisions necessary to ensure the protection of natural habitats and wild flora and fauna. The provisions of both directives have to be transposed into binding national legislation. Both directives contain rules about site protection and species protection.

The Birds and Habitats directives have far-reaching consequences for planning and decision making in Member States. One important consequence is the need to take into account the requirements of the Birds and Habitats Directives in the decision making about physical interventions. Activities in and around protected areas can have significant effects on protected nature values, and need to be assessed. Not only do conflicts arise over new developments, but current use is also subject to an appropriate assessment. The consequences of legislation often become clear in times of direct conflict.

In the Netherlands, the implementation of these Directives caused several problems, such as delaying of planning processes. Many of the conflicts have ended in judicial intervention. A well known example is the construction of a major new business centre in between the Dutch city of Heerlen and the German city Aachen which was stopped because of a ruling of the highest Dutch Court: the presence of the wild hamster was not sufficiently taken into account in decision making procedures (Van der Zouwen & Van Tatenhove, 2002)<sup>i</sup>. Other Member States have faced similar problems. Despite these problems, little is known about how the directives affect regional and local level decision making. Insight into these effects is essential to an evaluation of these directives, however.

From formulation to implementation, the legislation process is lengthy and involves a great many actors. European nature conservation legislation thus forms a network of

actors, all somehow involved in the designation and implementation of this legislation (Liefferink et al., 2002). Edelman & Suchman (1997) describe the implementation of a law as a highly interactive process of social construction. Official agents of the legal system and members of the focal organisation field collaborate to enact simultaneously the meaning of law, the nature of the enforcement threat, and the options for compliance. Implementation literature, with roots going back to the late 1970s, emphasizes the importance of the process, the institutions and actors involved, and their interactions (Mazmanian & Sabatier, 1983; Schofield, 2001; Barrett, 2004). This implementation process has both a macro and a micro political context (Barrett, 2004). It determines the differences between “law by the book” and “law in action”. In order to study the effects of European nature conservation legislation, this paper will study the “law in action”. The directives are studied in practice, where they are used to protect species and their habitats, and used in decision making processes. The main goal of this nature conservation legislation is to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements (92/43/EEC). Although this objective might be obvious, evaluating it can be very difficult, not to say impossible. Does European nature conservation legislation indeed provide better means of protecting specific nature values? To answer this question more knowledge is required about the way both directives influence planning processes.

The aim of this article is to show the effects of the Birds and Habitats Directives on Dutch planning practice and to discuss the implementation of this specific European nature conservation legislation. The Birds and Habitats directive are part of a whole range of European policies and legislation. More than 100 pieces of legislation pass through European institutions every year (Hix, 2005). Among them are environmental policies that focus on water quality (Water Framework Directive, 2000/60/EC), air quality assessment and management (Ambient Air Quality Directive 96/62/EC) or environmental impact assessment (directives 85/337/EC, 97/11/EC, and 2001/42/EC). In the Netherlands, and most likely also in most other Member States, the consequences of EU policies are very apparent (Van Ravesteyn & Evers, 2004). Most European legislation is superior to national legislation and the influences of European legislation are therefore increasing throughout the Member States of the European Union. A study of the implementation process of the Birds and Habitats directive can provide valuable insights about the effects European legislation has. These insight are useful both for further studies into the implementation of European legislation as well as for future evaluations of European policies.

The next paragraph will start with a theoretical perspective on the implementation of legislation. The ideas and perspectives from this body of knowledge are used to frame the study presented in this paper and to determine the research method. The

methodological paragraph is followed by a description and an analysis of the implementation process in the Netherlands. Lastly, the results of this analysis will be discussed.

### **Legislation: interpretation & application**

The Birds and Habitats Directives aim to protect specific nature values. Nature conservation legislation is an instrument for achieving this objective. Legislation aims to affect decision making, and resulting actions and outcomes, in such a way that specific nature values are well protected. A study of the effects of this legislation should consider both the way decision making is affected and the way objectives are achieved. Hopkins (2001) shows that there are many ways in which plans (and the same holds for legislation) affect decision making, actions, and outcomes and that linking observable phenomena to these plans can be very difficult. Judging nature conservation legislation on outcomes is very difficult, not to say impossible. If it doesn't work, the effects are obvious: species and habitats are lost. But if they are still there, is it because of this legislation? To answer this question, the performance of legislation should be studied (Faludi, 2000). Is it used in decision making and does it affect actions? Only if more is known about the performance of legislation is it possible to discuss whether or not the objectives have been achieved. Other important aspects of evaluating policy implementation are mentioned by Terpstra and Havinga (2001). They argue that policy implementation should be situated in a developmental context, that implementation practices should be analysed in relation to their institutional context and that styles of regulations should be compared not only between sectors and organisations, but also between different periods of time. The context dependency of legislation implementation is an especially important aspect (e.g. Edelman & Suchman, 1997; Gregg, 1999; Aalders & Wilthagen, 1997). The implementation of legislation will never be uniform because laws are fundamentally ambiguous and need to be interpreted in specific contexts (Gregg, 1999). The freedom to decide how to implement rules and laws is called discretionary freedom or discretionary space (Bakker en Van Waarden, 1999). Laws gain meaning only after professional and organisational communities have socially constructed this meaning. In practice, laws are interpreted and applied, and this can either dampen or amplify their impact (Edelman & Suchman, 1997). These two sets of mechanisms, leading to differences in the implementation of European legislation, are interrelated: the way the legislation is interpreted determines the way it is applied, and vice versa.

The Birds and Habitats Directives, or rather the text of these directives, acquire meaning through interpretation in specific situations. This could be a planning situation in which a directive has to be used to make a decision, or a situation in which it has to be

translated into new text, for example the formulation of laws, regulations or policies. Each interpretation of the directives, made by different people, at different times, for different reasons, will be different. Different interpretations of the directive will lead to a different way of implementing it. One of the most obvious situations in which interpretation plays an important role is the translation of the text of the directives into the different Member State languages. Although sentences and terms from a directive can be simply copied into the national legislation, the necessary translation will inevitably change the meaning of these sentences and terms. The way the directive is applied also causes differences in implementation. People who use the directive as a guideline will interpret and use the texts of the legislation in a different way than people who cling to the letter of the law. Styles of regulation differ between Member States and between organizations involved in the implementation of the Birds and Habitats Directives (Terpstra & Havinga, 2001). The way in which laws are used differs with the style of regulation (Ringeling, 2002).

There are many ways of interpreting and applying the Birds- and Habitats Directives. The leeway that on the one hand enables authorities to use the legislation flexibly according to the circumstances, might on the other hand lead to widely differing ways of applying the legislation. To prevent such arbitrariness, a stricter and more uniform usage is often striven for. But then again, strict adherence to the Birds and Habitats Directives limits the scope for local authorities to cope with specific circumstances. This contradiction is important when studying the implementation of European directives, like the Birds and Habitats Directives. It is important that the balance between flexibility and uniformity be discussed at the European level, but also at the national level and even at the local level. Once Member States have integrated the directives into their own legislation and policies, implementation by lower tiers of the government and in practice is likely to meet similar problems.

### **Research method**

The aspects of implementation of legislation described in the previous paragraphs are used to formulate a framework for this study. Most important is that implementation is seen as a process. This notion urges to take into account a longer period of time. During the implementation process a wide range of actors are involved. All these actors have different ways to interpret and apply legislation and they all play different roles in the implementation process. Legislation should therefore be studied as it is used in practices; in context. The effects of the Birds and Habitats directive become visible in actions and decision making of involved actors. With these notions in mind this study focuses on the different actors, their roles in the process, and the ways in which decisions and actions are influenced by the Birds and Habitats directive. These decisions and actions are an

important part of the research data. In order to determine how the implementation process evolves during time these decisions and actions will be studied in diachronic perspective.

This paper draws on an analysis of many publications like policy documents and articles, relevant jurisprudence and interviews with different actors. During the past few years, a wide range of publications, ranging from scientific papers to reports in local newspapers, have discussed the problematic implementation of both directives in the Netherlands (see e.g. De Boer & Van den Brink, 2005; Bastmeijer & Verschuuren, 2003; or Van der Zouwen & Tatenhove, 2002 for an overview). Meanwhile, law suits have provided a lot of jurisprudence (Kistenkas & Kuindersma, 2004 and 2005).

Magazine and newspaper articles about decision-making processes in which the Birds and Habitats Directive played an important role have been studied. These give an impression about the situations in which the directives play an important role and about the ways people deal with the directives. In several plans and projects the lawsuits played an important role in the decision making process. For some of these cases the available jurisprudence has been analysed. Jurisprudence shows only cases in which legal action against decisions were taken. Many decisions however, are taken and put into action without protest. The interviews were conducted in order to get a better overview of the implementation of the Birds and Habitats Directive in the Netherlands. In total 45 actors involved were interviewed to gain more inside information and to obtain an impression of their opinions and viewpoints. Interviews were held with actors from the national government (5), regional governmental organisations (8), local governmental organisations (6), consultancy companies (5), non-governmental organisations like nature conservation organisations, and agricultural and business unions (11), researchers (3), local actors like farmers, land-owners and tourism companies (7). Most of these interviews were semi-structured in-person interviews with open-ended questions.

This between-method triangulation is necessary in order to study the many-sided implementation of the Birds and Habitats directive in planning practices. Triangulation offers the possibility of adding a sense of richness and complexity to an inquiry (Bryman, 2004).

This paper gives a descriptive analysis of the Birds and Habitats directive. Its focus is on understanding and explaining the ways these directives are used in practices. O'toole (2000) emphasizes the conceptual distinction between implementation and the impact on the policy problem. Implementation concerns "the development of systematic knowledge regarding what emerges" (ibid). This study focuses on the implementation process but the results of the study are related to the problems that the Birds and Habitats directive ought to address: the conservation of species and habitat types. This is

done to show both positive as well as negative aspects that consequent from the directives.

### **The problematic implementation in the Netherlands: a diachronic perspective**

Two developments illustrate the problematic implementation of the Birds and Habitats directives in the Netherlands: the delayed designation of sites, and decision-making processes that ended with lawsuits because of the presence of protected species.

The first problems arose with the selection and designation of Natura 2000 sites. Following criteria given in both directives, Member States have to select and designate sites in their country. In the Netherlands, just as in many other countries, this obligation was very problematic. Member States faced criticism from two sides. On the one hand, the European Commission took legal action against many member states because they failed to submit a list of designated sites and because they failed to take the necessary measures to prevent the degradation of these sites (Weber & Cristophersen, 2002; Paavola, 2004; WWF, 2001). In 1998 the European Court for instance declared that the Netherlands failed to designate a sufficient number of special protected areas as is obligated under the Birds directive<sup>ii</sup>. The designation of sites under the Habitats Directive was also problematical, although legal actions were avoided (Bastmeijer & Verschuuren, 2003). On the other hand, local parties, especially land-owners and site managers, complained that they were not involved in the selection process (Krott et al., 2000; Stoll-Kleemann, 2001; Ledoux, et al, 2000; Alphandéry & Fortier, 2001). The Dutch government for instance received over 5000 reactions from a wide range of organisations and individuals to the designations of sites under the Birds directive (Van der Zouwen & Tatenhove, 2002). One of the most extreme examples of the opposition to the designation of Natura 2000 sites occurred in Finland, where local land owners went on hunger strike to protest against the designation of a specific area (Hiedanpää, 2002).

The second type of problem is exemplified by the many plans and projects that have been frustrated by lawsuits. Drawing on the Birds and Habitats directives NGOs and private parties went to court to contest plans and projects that they considered illegal. Several cases were decided in the NGOs' favour and the projects were delayed or stopped. A well-known example in the Netherlands is the earlier mentioned case of the wild hamster, which stopped the construction of a planned business centre. Other examples are the construction of the highway A73<sup>iii</sup>, plans for new residential areas in Leeuwarden<sup>iv</sup>, mechanical fishing of cockles in the special protection area (SPA) of the Waddenzee<sup>v</sup>, and more recently the construction of the new seaport and industrial area Maasvlakte 2 in Rotterdam<sup>vi</sup>. The conflict situations and the lawsuits show that European nature conservation legislation has become an important aspect of decision making processes.

Studies of the implementation of the Birds and Habitats Directive show several factors that caused the problematic decision making (see also Bastmeijer & Verschuuren, 2003; Sanderink, 2003, De Boer & Van den Brink, 2005). Many actors involved in decision-making processes (e.g. project developers and street-level officers were unfamiliar with the Birds and Habitats Directives and their precise implications. For many people, it was unclear which legislation (national or European) was to be followed. They were also unaware of the presence of protected species. This lack of knowledge and information resulted in decision making that did not take the Birds and Habitats Directive into account. Actors either did not know that they had to work with these directives, or they did not know how to work with them. The Habitats Directive requires that an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a designated site. Due to insufficient knowledge and information, this requirement was seldom met. Careless decision making was one of the main reasons why courts annulled these decisions (Bastmeijer & Verschuuren, 2003; Kistenkas & Kuidersma, 2004).

Cancelled and delayed projects gained a lot of attention in the press, with many newspaper articles devoted to the little animals that stopped the construction of roads, business parks or housing developments. Policy makers and jurists discussed adaptations of laws and the formulations of norms in order to clarify how to integrate the Birds and Habitats Directive into the Dutch planning practice. At this point, the government started campaigns to inform actors about the consequences of the Birds and Habitats Directive. The Ministry of Agriculture, Nature and Food Quality published many brochures, flyers and guidelines to inform and facilitate stakeholder who are dealing with the Birds and Habitats directive<sup>vii</sup>. A more remarkable initiative was the start of a new organisation “Natuurloket” (Nature Portal) that uses an internet site to offer insight into the occurrence of protected species and about national and international laws concerning these animal and plant species ([www.natuurloket.nl](http://www.natuurloket.nl)). The actors involved learnt from previous problems and paid more attention to nature conservation legislation in decision-making processes. Although there are still some problematic situations, especially in larger projects with more significant effects on protected species and areas (for instance the project Maasvlakte 2), the number of projects frustrated by nature conservation legislation has decreased.

### **Interpretation and application of the Habitats Directive in the Netherlands**

The discussion about the Birds and Habitats Directive and their consequences for decision making in the Netherlands really took off when NGOs started lawsuits against several projects, drawing on these directives. Courts in the Netherlands needed to judge whether decision making had taken the directives fully into account. The first

interpretations of the directives were therefore made in court, by judges. They determined from their perspective whether decisions met the requirements of the Habitats Directive. This formal interpretation set the tone for the debate about the implementation of the Birds and Habitats Directives in the Netherlands. Especially at first, this discussion was dominated by legal advisers, jurists and lawyers, and revolved around two major complaints about the Birds and Habitats Directives. On the one hand the directives were too strict and if they were to be followed in land use development, no plan or project would ever be possible. On the other hand the directives were described as too vague. Terms like 'significant effects', 'appropriate assessment' or 'imperative reasons of overriding public interest' did not give enough clarity about how to meet the Habitats Directive's requirements. The criticisms that the directive is both too strict and too ambiguous can be linked with the contradiction between flexibility and uniformity. On the one hand, this nature conservation legislation can be interpreted and applied very strictly, thus frustrating all plans and projects. On the other hand, the legislation offers space for interpretation, laying it open to the accusation that it is too vague.

Explanations for these problems can be found in the way the Birds and Habitats Directives were formulated. Fairbrass (2000) explains that the nature of decision-making in the EU is such that it compels the decision-makers to frame loosely worded legislation. Member states have to agree unanimously with the formulated legislation. The EU differs from nation states and can be seen as both a polity in its own right as well as an experimental exercise in international cooperation (Peterson, 2001). To encompass different views, interests and opinions, it is the EU's practice to draft legislation that is necessarily vague (Dimitrakopoulos & Richardson, 2001). Pinton (2001) also argues that the Habitats Directive has the potential for conflict because it does not address the crucial issue of the coordination between the various poles of scientific knowledge, social practises and political decision making.

Many of the articles about the implementation of the Birds and Habitats Directives and their consequences for the Dutch planning practice have been written by jurists (Table 2-1). They focus on the formal aspects of the legislation, and they interpret it from a judicial perspective, without linking it to planning practice. Nevertheless, their interpretation gained the most attention in the national discussion. The result is a Dutch nature conservation legislation that perfectly follows the European legislation (it is almost a literal translation) but that still lacks guidelines as to how to apply this legislation in decision making. Due to this strictly formal interpretation of the Birds and Habitats Directives, decision making is becoming an increasingly legalistic discourse. This can be seen as a self-enhancing development. After the first cases were decided in court, the role and influence of courts, judges and lawyers has increased. As a consequence, more emphasis is put on judicial and formal aspects in decision making, as opposed to



substantial aspects. This in turn leads to parties more often using formal aspects of laws and legislation as a weapon in the political battle of decision making. Disagreement about decision is more easily brought to court, which again increases the influence of the judicial discourse on decision making.

### **For better or for worse?**

The number of plans and projects that have been frustrated might suggest that nature conservation gains from stricter legislation. The Birds and Habitats Directives have increased the scope for nature conservationists to take legal action against plans and projects with possible negative effects on nature values. A well known example in the Netherlands is the case of cockle fishing in the Waddensea. Using the Birds and Habitats directive and after involvement of the European Court of Justice, nature conservationist managed to stop cockle fishing. Lawsuits showed that the Dutch government had not taken into account the requirements of the Birds and Habitats correctly when the granted a licence for cockle fishing. In this case the involvement of the Europe Union and its legislation proved to be very valuable.

But the question is whether these “victories” will be sustainable and whether it really improves nature conservation in the long run? An analysis of the implementation process in the Netherlands shows that, influenced by the Birds and Habitats Directives, decision making about protected areas has shifted its focus from content to process. Courts have judged decisions mainly by looking at whether the necessary studies were conducted, and not at how these were conducted, or what was done with the results (Kistenkas & Kuidersma, 2004). The existence of research studies proved to be more important than their content. Some researchers have even argued that in some law cases, judges have carelessly checked whether decisions meet the requirements of the European directives (Verschuuren, 2001).

The Habitats Directive (article 6) states that all plans and projects likely to have a significant effect on a site’s conservation objectives are to undergo an ‘appropriate assessment’. Plans can only be approved if it is clear that they will not adversely affect the integrity of the site concerned, or if, in the light of a negative assessment and in the absence of alternative solutions, there are imperative reasons of overriding public interest. This implies that at least one and, if necessary, three studies must be conducted. The first study is the (1) appropriate assessment. If this study gives a negative assessment, (2) alternative solutions have to be studied and (3) the imperative reasons of overriding public interest have to be shown. The first decisions that were brought to court did not take these requirements into account. Most people simply did not know they had to do so. This made it very easy for courts to annul these decisions. They did not need to judge anything else than the existence of the required studies. The fact that no

studies were made of the effects, the alternative solutions, or reasons of overriding public interest, proved that the requirements of the Birds and Habitats Directive were not taken into account and led to annulments of decisions. Studies that were made following Dutch legislation did not meet the standards required by the Birds and Habitats Directive and could not be used instead. Currently, most actors know about these requirements and have learned how to work with them. But instead of this leading to a more appropriate assessment of nature values in decision making, we can see that the required reports are produced in order to sustain decisions that have in fact already been taken. The interviews showed the various ways in which nature conservation legislation was applied in decision making. In some cases, studies were intended for use in decision making, but in other cases, reports were only written in order to sustain decisions (unofficially) already made. This does not imply that the studies for this reports are not done carefully or that the reports are not good. The point is that the study is not conducted to be used in the decision making process, but to make sure the decision meets the requirements of the Habitats directive. "Knowledge" was produced and used to rationalize decision making (Flyvbjerg, 1998). Consultant companies were hired to study effects and to write the required reports about these effects, about alternative solutions, and about the overriding reasons over public interest. The planning practice in the Netherlands shows that consultant companies have become very important in decision making about protected nature values. On the one hand they "judge" whether activities have significant effects and they study the needs for certain activities. On the other hand they are often paid by the initiators of the activities. One can understand that this gives them a difficult and sometimes suspect role in decision making<sup>viii</sup>. This dilemma is elaborated by Panebianco et al. (2005). They show that evaluations face a series of obstacles: methodological concerns, unclear objectives, and conflicting interests of the actors involved. The people who produce evaluations and assessments, and who determine effects, find themselves caught in a web of different, partly conflicting, interests: the clients, the addressees and the scientific community involved in evaluations (ibid). It is important to realise that knowledge about possible effects and about the overriding public interest are deliberated among involved actors in specific contexts.

Also NGOs focus more and more on procedural mistakes in order to bring decisions to the court. This often gives them better chances of winning their case. These findings about the way nature conservation legislation is used in planning practice reconfirm Barrett's (2004) concerns that performance might become conformance if too much top down coercive pressure is put on prescribed targets. The fear of the consequences of failure makes actors focus more and more on these targets (necessary studies) instead of trying to take into account the reasons why these studies should be made: the main objective of the Birds and Habitats Directive.

Legislation is formulated in order to influence the outcomes of this political decision making so that specific objectives can be achieved. Legislation influences the content of the decision through the process of decision making. Planning practice teaches us that the scope for this is limited. However, these procedural changes in the decision-making process imply that the costs of decision making increase; more labor, more deliberation and consideration, and more research are required. And in more and more cases, the costs of lawsuits have to be added too. Interviewees showed their worries about this situation. There is a growing opposition to the Birds and Habitats Directives and indirectly also to nature conservation (Verschuuren & Wijmen, 2002). Articles in newspaper and professional journal show this opposition. Not only project developers and local politicians are critical about the directives. Also more neutral policy makers and even nature-conservationists show their worries about the problematic and discordant situations and they too blame the directives<sup>ix</sup>. The situation in the Netherlands shows that the European directives are more and more regarded as what Bardach & Kagan (1982) call regulatory unreasonableness.

### **European directives & implementation studies**

This study focused on the implementation of the Birds and Habitats directive but similar studies can be made for other European directives and policies. This study will be used to discuss the importance and the possibilities of implementation studies. Hix (2005) describes the outcomes of political processes as the sum of personal wants and desires of actors (preferences) and the formal and informal rules that determine how collective decisions are made (institutions). Insight in the interplay between preferences and institutions gives insight in how the European Union works.

In the Netherlands the Birds and Habitats gained a lot of attention only after NGO's asked attention for the directives and started lawsuits. This shows that the "ears and eyes" of the European Union are very important in the implementation process. The study of the implementation of the Birds and Habitats directive show that they get their meaning in planning practices. These planning practices are never about these directives alone. In fact the directives are only one of many aspects influencing these practices. Planning practices are characterised by a number of competing actors who have different objectives. These own objectives can be similar or different from the objectives as formulated in the directives. In many cases actors use directives as a means to obtain advantages over their competitors (Edelman & Suchman, 1997). This awareness urges implementation studies to take into account these local practices because they affect the way in which European directives come into practice. A study of the context in which actions and decisions are taken is required to understand how directives affect these actions and decisions.

This study also showed that knowledge is very important in the implementation process. First of all knowledge about the directives is required. The fact that many actors did not know about the Birds and Habitats directive was one of the main reasons for many conflict situation. But knowledge, e.g. ecological, economic, or social, is also required for decision making. The Birds and Habitats directive for instance require a careful assessment of ecological effects. Thus the directives demand the use of specific knowledge in the decision making process. Richardson (2005) also emphasises the importance of ideas, knowledge and expertise in the study of European policies. It is important to understand how knowledge is produced by actors and that it is subject to discussion. Foucault's notions about the relation between knowledge and power (for instance 1997) are therefore very relevant in decision-making processes, as also shown in Flyvbjerg's book *Rationality & Power* (1998). Decision making, no matter how much knowledge of whatever kind is used, remains politics. The political dimension of the implementation of policies (and legislation) was already elaborated in the '70s. Pressman and Wildavsky (1973) show that in each decision-making situation, with its own actors and objectives, the political dimension leads to different usage of policies and laws and therefore to different outcomes. With their notions in mind, one may wonder that European legislation works at all. But these notions also show that in order to understand how European directives work, implementations studies that focus on the decisions making processes and aspects that influence these processes, are inevitable.

## **Conclusions**

The European Union has formulated the Birds and Habitats Directive to protect biodiversity. People involved in the formulation process considered this legal framework a suitable instrument for forcing member states to implement European nature conservation goals. In practise however, there is a big difference between formulating of aims about nature conservation in directives and acting upon these aims. The directives must be implemented, and the national governments of the member states play an important role in this process. They have to transpose the directives into national legislation and policies, to raise awareness of the directives, and to inform other actors about the consequences. The implementation (interpretation and application) of the European Birds and Habitats Directives into planning practices depends on the authorities responsible. These authorities have to decide about activities that possibly conflict with nature conservation objectives. Their knowledge of the directives, and their interpretation and application, determines how nature conservation legislation is used in these decision making processes.

The study of decision making processes in which the Habitats Directive played an important role revealed that in many cases, the courts annulled decrees because the

requirements of the Habitats Directive were insufficiently met, due to a lack of attention, knowledge or awareness. Reasons for such annulments include the argument that it has not been sufficiently proven that the project has no significant effects, that no research had been conducted into the effects or that the lack of reasonable alternatives has not been convincingly demonstrated. Many conflicts in the Netherlands were caused by a lack of knowledge and information about the occurrence of species. Careful decision making about nature conservation goals requires adequate information about the occurrence of specific species in the area. In order to assess the effects of activities on the population of a certain species, one needs detailed information about this population and its dynamics. Another reason for many conflicts was the unawareness or limited knowledge about relevant legislation and how this should be used. The Dutch national government is partly to blame for the problematic implementation. It took a long time before sites were designated and the Birds and Habitats Directives were transposed into national legislation, and they failed to inform actors about the consequences of both directives. This caused a legally obscure situation, and, not surprisingly, led to many problems. Governments should be aware that information and knowledge about policies and legislation are essential aspects of the implementation process. Providing information is an important means for improving the implementation process.

From a nature conservation perspective the formalisation of nature conservation legislation has advantages as well as disadvantages. More attention is now paid to nature conservation objectives in decision making, and NGOs have stronger possibilities for taking legal action. But legislation does not automatically guarantee an appropriate assessment in decision making, while it does lead to higher process costs, more conflicts and decision making through lawsuits. These conflicts push the actors involved further apart, increasing the opposition to nature conservation, and with it the unwillingness of actors to cooperate and follow the rules. Strict legal interpretations have put more emphasis on the procedures formulated to protect endangered species and habitats, but at the same time the goals of these procedures are fading into the background.

**Table 2-1.** A list of journal papers and reports that discuss juridical aspects of the Birds and Habitats directive in the Netherlands (all in Dutch).

- Backes, W. & Rotmeijer. (2002) Soortenbescherming in Nederland. Centre for Environmental Law and Policy, Utrecht University, Utrecht..
- Bastmeijer C.J., & Verschuuren, J.M. (2004) Juridische knelpunten bij de bescherming van natuurgebieden. *Milieu & Recht*, 31 (3), p. 143-149.
- Freriks, A.A. (2001) *Natuurbeschermingswet 1998: implementatie van richtlijnverplichtingen voltooid?* *Milieu & Recht*, 28/1, p. 7-15.
- Kistenkas, F.H. (2005) Een staatsrechtelijke patstelling: de Waardenburgnorm. *Nederlands Juristenblad*, 4: 212.
- Meijer, E.E. (2002) Rechtstreekse werking international natuurbeschermingsrecht. *Milieu & Rechts*, september 29/9: 226-132.
- Neuman, F. & Woldendorp, H.E. (2002) De Europese Vogelrichtlijn en Habitatrichtlijn. Of de invloed van het visdiefje en de nauwe korfslak op de ruimtelijke ordening in Europa. *Tijdschrift voor Omgevingsrecht*, 2: 42-50
- Veltman, J. (2002) De natuurbeschermingswet opnieuw op de helling. *Milieu & recht*, 29/4: 100-107.
- Vos, P., De Kimpe, L., Hoorick, G. van, Musters, K., Meelis, E., Keurs, W.J. ter. (2002) Tien eisen aan een 'passende beoordeling' Kan de ecologie de Habitatrichtlijn wel aan? *Kenmerken* 9 (1), p.8-14.
- Woestenburg, M. (2005) Alterra ruziet met concurrent over norm habitattoets. *Wb*, weekblad voor Wageningen UR, 7: 21 april 2005.
- Woldendorp, H.E. (2002) Europese actiepunten inzake het Nederlandse natuurbeschermingsbeleid. *Milieu & Recht*, 29/4: p. 94-99.
- Zijlmans, J.M.I.J. (2002) Het voorstel tot wijziging van de Natuurbeschermingswet 1998. *Jaarnaal Omgevingsrecht*, 5: 148-157.

<sup>i</sup> LJN: AA9523, Council of State, 200004163/1 & LJN: AA6571, Council of State, 199901039/1 (All Dutch case law is available at the website <http://www.rechtspraak.nl>.)

<sup>ii</sup> European Court of Justice Case 3/96 (All ECJ case law is available at the ECJ's website <http://curia.eu.int>)

<sup>iii</sup> LJN: AF0231, Council of State, 200200050/1

<sup>iv</sup> LJN: AS7244, Council of State, 200401256/1

<sup>v</sup> LJN: AT6572, Council of State, 200409107/1 & European Court of Justice C-127/02

<sup>vi</sup> LJN: AS3915, Council of State, 200307350/1

<sup>vii</sup> An overview of the brochures, flyers and guidelines published by the Ministry of Agriculture, Nature and Food Quality can be found at their website (<http://www.minInv.nl>).

<sup>viii</sup> Consultant companies are aware of this situation and they discuss it among themselves and with the national government. A discussion between two important green consultant companies about whether or whether not a 5% decline of a population is significant, who should determine this, and if this norm can be used in all situations, shows that it is not easy to find simple solutions and that there is some disagreement about these points. See Kistenkas (2005, table 2-1) & Woestenburg (2005, table 1) for an overview of this discussion.

<sup>ix</sup> In a joint statement, the nature conservation organisations Badger & Tree; Reptiles, Amphibians & Fish surveys Netherlands; Dutch Butterfly Conservation; and European Invertebrate Survey Netherlands, together with project developers: The Association of Dutch Property Developers and the United Construction Sector Companies, show their worries about the conflicts that nature conservation legislation causes. They recognise the protection of species, but they demand the national government to provide more information and clearness about the rules and about the occurrence of protected species in order to avoid conflict situations. Other examples are found in the reports Broek, J.H.G. & Schippers E.I. (2002) Soorten en Maten. Beleidsadvies VNO-NCW and Raad voor Landelijk Gebied (2002) Voorkomen is beter... Advies over soortenbescherming en economische ontwikkeling. RLG/02/0. Both in Dutch. In the first report the Confederation of Netherlands Industry and Employers argue that the Birds and Habitats directive cause unnecessary frustrations among plan- and project developers and they plead for adaptation of both directives. In a article in a national newspaper the chairman of this organization states that there are "only losers". The study of the Council for the Rural Area shows that economical and other social activities are sometimes unnecessarily frustrated by protected species legislation and that this undermines the credibility of nature conservation and frustrated nature development. In a national newspaper local politician as well as a employee of Birdlife International in the Netherlands show their worries about the problematic implementation of the Birds- and Habitats directive (Volkskrant, March 10, (2001)Verlamd door het beest).

## Reference list

- Aalders, M., & Wilthagen, T. (1997) Moving Beyond Command-and-Control: Reflexivity in the Regulation of Occupational Safety and Health and the Environment. *Law and Policy* 19 (4): 415-443.
- Alphandéry, P. & Fortier, A. (2001) Can a Territorial Policy be Based on Science Alone? The System for Creating the Natura 2000 Network in France. *Sociologia Ruralis* 41 (3): 311-328.
- Bakker, W. & Van Waarden, F. (ed.) (1999) *Ruimte rond regels. Stijlen van regulering en beleidsuitvoering vergeleken*. Uitgeverij Boom, Amsterdam. (In Dutch).
- Bardach, E., Kagan, E. (1982) *Going by the book. The problem of regulatory unreasonableness*. Temple University Press, Philadelphia, in: Bakker, W. & Van Waarden, F., (ed.) 1999. *Ruimte rond regels. Stijlen van regulering en beleidsuitvoering vergeleken*. Uitgeverij Boom, Amsterdam.
- Barrett, S.M. (2004) Implementation studies: time for a revival? Personal reflections on 20 years of implementation studies. *Public Administration* 82 (2): 249 – 262.
- Bastmeijer, C.J., & Verschuuren, J.M. (2003) *Knelpunten bij de uitvoering van de natuurbeschermingswetgeving in Nederland. Onderzoek in het kader van het IBO Vogel- en Habitatrichtlijnen*. University of Tilburg, Tilburg. (In Dutch).
- Bryman, A. (2004). *Social research methods*. Oxford University Press, Oxford.
- De Boer, I., & Van den Brink, A. (2005) Vogel- en Habitatrichtlijn: de stap van regels naar praktijk. In: Meester, G., A. Oskam & H. Silvis (ed.), 2005. *EU-beleid voor landbouw, voedsel en groen. Van politiek naar praktijk*. Wageningen Academic Publishers, Wageningen. (In Dutch)
- Dimitrakopoulos, D., Richardson, J. (2001) Implementing EU public policy. In: Richardson, 2001. *European Union: Power and Policy-Making*. Routledge, London.
- Edelman, L.B., & Suchman, M.C. (1997) The legal environments of organizations. *Annual Review of Sociology* 23: 479-515.
- Fairbrass, J. (2000) EU and British biodiversity policy: ambiguity and errors of judgement. CSERGE Working Paper, GEC 2000-04. Centre for Social and Economic Research for the Global Environment, University of East Anglia, Norwich.
- Faludi, A. (2000). The performance of spatial planning. *Planning Practice & Research* 15 (4): 299-318.
- Flyvbjerg, B. (1998) *Rationality and Power, Democracy in Practice*. University of Chicago Press, Chicago.
- Foucault, M. (1997) Society Must be Defended. In M. Bertoni & A. Fantana & T. b. D. Macey (Eds.), "Society Must be Defended": Lectures at the College De France, 1975-1976. New York: Picado.
- Gregg, B. (1999) Using Legal Rules in an Indeterminate World, Overcoming the Limitations of Jurisprudence. *Political Theory* 27 (3): 357-378.
- Hiedanpää, J. (2002) European-wide conservation versus local well-being: the reception of the Natura 2000 Reserve Network in Karvia, SW-Finland. *Landscape & Urban Planning* 61 (2): 113-123.



- Hix, S. (2005) *The Political System of the European Union*. Palgrave Macmillan, Basingstoke
- Hopkins, L.D. (2001) *Urban development. The logic of making plans*. Island Press, Washington.
- Kistenkas, F.H. & Kuindersma, W. (2004) *Europees en nationaal natuurbeschermingsrecht. Ontwikkelingen in jurisprudentie, regelgeving en beleid*. Planbureau rapporten 21. Natuurplanbureau, Wageningen. (in Dutch).
- Kistenkas, F.H. & Kuindersma, W. (2005) *Soorten en gebieden. Het groene milieurecht in 2005. Rapport 7, Wettelijke Onderzoekstaken Natuur & Milieu, Wageningen*. (in Dutch).
- Krott, M., Julien, B., Lammertz, M., Barbier, J.-M., Jen, S., Ballestreros, M., & De Bovis, C. (2000) *VOicing Interests and ConcErns: NATURA 2000: An ecological network in conflict with people*. *Forest Policy and Economics*, 1: 357–366.
- Ledoux, L., S. Crooks, A. Jordan & R.K. Turner (2000) *Implementing EU biodiversity policy: UK experiences*. *Land Use Policy* 17 (4): 257-268.
- Liefferink, J.D., J.P.M. Van Tatenhove & M.A. Hajer (2002) *The dynamics of European nature policy: the interplay of front stage and back stage by 2030*. In: W. Kuindersma (eds.) *Bestuurlijke trends en het natuurbeleid*. Planbureaustudies nr. 3, Wageningen: 39-63.
- Mazmanian, D.A., Sabatier, P.A. (1983) *Implementation and Public Policy*. Scottt, Foresman and Co, Glenview.
- O'toole, L.J. (2000) *Research on Policy Implementation: Assessment and Prospects*. *Journal of Public Administration Research and Theory* 10 (2): 263-288.
- Paavola, J. (2004) *Protected Areas Governance and Justice: Theory and the European Union's Habitats Directive*. *Environmental Sciences* 1 (1): 59-77.
- Panebianco, S., J. Fasselt, U. Dönitz & R. Zimmer-Hegmann (2005) *Evaluating Regional Governance: Methodological Concerns and Practical Experiences*. Paper presented at the ERSA 2005-Conference, Amsterdam 27-31 August 2005.
- Peterson, J. (2001) *The choice for EU theorists: Establishing a common framework for analysis*. *European Journal of Political Research* 39 (3): 289-318.
- Pinton, F. (2001) *Conservation of Biodiversity as a European Directive: The Challenge for France*. *Sociologia Rurales*, 41 (3): 329-342.
- Pressman J. & Wildavsky, A. (1973) *Implementation. How Great Expectations in Washington are dashed in Oakland*. University of California Press, Berkeley.
- Richardson, J. (2005) *Policy-making in the EU. Interests, ideas and garbage cans of primeval soup*. In: Richardson J. (eds.) *European Union: Power and Policy-making*. Routledge, London.
- Ringeling, A. (2002) *An instrument is not a tool*. Paper presented at Conference on Policy Instruments, McGill School of Law, Montreal, Ontario, September 26-27.
- Sanderink, T. (2003) *De macht van de korenwolf*. Wageningen University, Wageningen.
- Schofield, J. (2001) *Time for a revival? Public policy implementation: a review of the literature and an agenda for future research*. *International Journal of Management Reviews* 3 (3): 245-263.
- Stoll-Kleemann, S. (2001) *Opposition to the designation of protected areas in Germany*. *Journal of Environmental Planning and Management* 44 (1): 109-128.

- Terpstra, J., & T. Havinga (2001) Implementation Between Tradition and Management: Structuration and Styles of Implementation. *Law & Policy* 23 (1): 95-116.
- Van der Zouwen, M. & J.P.M. Van Tatenhove (2002) Implementatie van Europees natuurbeleid in Nederland. Planbureaustudies, nr 1, Natuurplanbureau, Wageningen.
- Van Ravesteyn, N. & D. Evers (2004) Unseen Europes. A survey of EU politics and its impact on spatial development in the Netherlands. Netherlands Institute for Spatial Research. The Hague. NAI Publishers, Rotterdam.
- Verschuuren, J.M. & P.C.E Van Wijmen (2002) Juridisering van besluitvorming over natuur en landschap als gevolg van EG-richtlijnen. Planbureaustudies 5. Natuurplanbureau, Wageningen.
- Verschuuren J. (2001) Over kokkels, hamsters en woelmuizen: de Vogel- en Habitatrichtlijn in Nederland, in: *Nederlands Tijdschrift voor Europees Recht* 4: 85-94.
- Weber, N. & T. Christophersen, T. (2002) The influence of non-governmental organisations on the creation of Natura 2000 during the European Policy process. *Forest Policy and Economics* 4 (1): 1-12.
- WWF (2001) A Race to Protect Europe's Natural Heritage. European snapshot report on the status of implementation of the Habitats Directive. WWF European Policy Office, Brussels.

# Chapter 3

Divergence and convergence in  
policy meanings of European  
environmental policies



The link between European environmental policies and spatial planning and decision-making in Member States is complicated and subject of much debate among students of the European Union and the processes of Europeanisation. This paper focuses on policy meaning and analyses the mechanisms of divergence and convergence that are at work in planning and decision-making practices in which the Birds and Habitats Directives are implemented. While many of the mechanisms are unconscious and unintentional and thus cannot be affected, others can be used intentionally and strategically during the formulation and implementation of the policies.

Beunen, R. & M. Duinveld (n.d) Divergence and convergence in policy meanings of European environmental policies: the case of the Birds and Habitats Directives. *International Planning studies*. (in review).

## Introduction

Spatial planning and decision making in member states of the European Union (EU) are increasingly affected by EU (environmental) policies. These policies aim to influence and change the outcomes of the planning and decision making processes in order to meet EU objectives. The European Union deals with many sectors and its objectives can be procedural, substantial or both. These objectives are often achieved through complex and bureaucratic procedures that not only enable but also delay and complicate the implementation process. Despite this complexity, policy fields still can have constructive outcomes, but the concerns about the problematic implementation and enforcement of EU environmental policies remain (Barnes & Barnes 1999). To discuss and judge European policies, we continuously need to analyse and evaluate the effects of European policies on the daily and often local practices of planning and decision making (cf. Olson, 2001; Wallace & Wallace, 1996). Policy analysis has proven itself to be useful in this endeavour because it has proven to generate insights into the political, social and spatial implications of public policy (Jensen & Richardson, 2004; Pressman & Wildavsky, 1979; Fischer, 2003).

The first major step of the implementation process is often the legal transposition of European policies into national policies and laws. This is a difficult step and for many policies this transposition is largely behind schedule (e.g. Kaeding, 2008; Gange & Van Waarden, 2005; Falker et al., 2004). Partly because of this 'implementation delay' the relation between the EU and the different member states has become an important issue among many policy scholars. A great deal of their research is focused on the implementation into national policies and the mechanisms of convergence on a national level (e.g. Knill & Lehmkuhl, 1999; Dorussen & Nanou, 2006; Lenschow *et al.*, 2005; Dimitrova & Steunenberg, 2000). It tends to take a macro-perspective on European integration and consider member states as a single actor (Gange & Van Waarden, 2005, p. 10). At the same time it is argued that the implementation of European policies is a process in which many different actors, from different governmental levels are involved (Hill & Hupe, 2003). It is therefore useful to analyse the wide range of actors with many and even conflicting objectives that together form a member state.

In this article we depart from the assumption that implementation does not stop with the transposition in national policies and laws. European policies only gain effect if and after they are interpreted and applied in planning and decision making practices on a local level. To study these effects we need adapted and different research methods. As Knill and Lehmkuhl put it: "We have to consider highly different explanatory factors in order to account for the change and persistence of domestic institutions in the light of European requirements" (Knill & Lehmkuhl, 1999, p. 4).

The aim of this study is to provide further insights in the mechanisms that affect how policies are interpreted in planning and decision-making practices and that affect how policy meaning evolves during the implementation process. The implementation of the Birds (79/409/EEC) and Habitats (92/43/EEC) Directives in the Netherlands is used as a case (cf. Beunen, 2006).

This article continues with an elaboration of the implementation of the Birds and Habitats Directives in the Netherlands. After that we present a theoretical framework related to European policies, planning and decision making and outline the concepts of divergence and convergence within the general framework of implementation as evolution. Next, we analyse some of the diverging and converging mechanisms that effected the implementation of the Birds and Habitats Directives in the Netherlands. Finally we discuss the most important findings of this analysis and how this helps to gain a better insights in the implementation of the Birds and Habitats Directives and policies in general.

### **Research approach**

A large body of knowledge has been published on the formal implementation of European policies and the interplay between the EU and its member states, with a main emphasis on the national level (e.g. Featherstone & Radaelli, 2003; Richardson, 2005). We have chosen a different focus and studied the way in which EU directives are interpreted and applied in local and regional planning and decision making processes. We analysed how policy meanings are produced, reproduced, and transformed into a contingent set of practices (cf. Pedersen, 2007; Pedersen, 2006; Hajer, 2005; Jensen & Richardson, 2004; Hajer, 1995).

This paper draws on an analysis of many publications like policy documents and articles, relevant jurisprudence and interviews with various people. In total 39 actors involved were interviewed to gain more inside information and to study how they constitute the Birds and Habitats Directive in the context they work. Interviews were held with actors from the national government (2), regional governmental organisations (9), local governmental organisations (6), consultancy companies (4), non-governmental organisations like nature conservation organisations, and agricultural and business unions (11), local actors like farmers, land-owners and tourism companies (7). Most of these interviews were semi-structured in-person interviews with open-ended questions. We also joined three different meetings that were organised by the provincial authorities to inform and consult various stakeholders about the directives. Next to the interviews with made an extensive survey of the numerous of publications on the implementation of the Birds and Habitats Directives in the Netherlands, ranging from scientific papers to reports in local newspapers (see e.g. De Vries & Beunen, 2009; Bouwma *et al.*, 2008;

Bastmeijer & Verschuuren, 2003; or Van der Zouwen & Tatenhove, 2002 for an overview). This literature gives an impression about the situations in which the directives play an important role and about the ways people give meaning to the directives.

### **The implementation of the Birds & Habitats Directives in the Netherlands**

The Birds and Habitats Directives are the most important EU instruments for the conservation of wild flora and fauna. These directives not only provide a framework for the selection of protected sites but also include legislation that guides decision makers in plans and projects that might affect protected species and areas. According to the directives, Member States have to designate protected areas and they have to transpose the directives into their national legislation. As such, the governance of nature is as much about the species and areas that need to be protected as it is about the ways in which they need to be protected. The Birds and Habitats Directives include specific procedures that must be considered during the decision making processes. For example, the effects of plans and projects on protected species and habitats need to be studied and possible alternatives need to be considered. Without an appropriate assessment of the ecological effects of the plans, the decision is not lawful.

Policy analyses in the field of biodiversity conservation show that the implementation of the Birds and the Habitats Directives has had significant and sometimes unintended consequences for spatial planning and decision making in most EU member states (see e.g. Fairbrass & Jordan, 2001; Laffan, 2004; Scholl & Chilla, 2005; Beunen, 2006). These unintended consequences include delays in the transposition of the directives into national legislation, uncertainties about the plans and activities and their effects on protected species and habitats, and conflicts and lawsuits over new and existing land use activities. The European Commission, for example, took legal action against several Member States that failed either to submit a list of designation sites or to take the necessary measures to prevent degradation of these sites (Weber & Cristophersen, 2002; Paavola, 2004; Stoll-Kleemann, 2001; WWF, 2001).

An extensive study of the implementation process of the Birds and Habitats Directives in the Netherlands showed that for a long time many decisions about plans and projects were taken without considering the EU directives (Beunen, 2006). At that time, the implementation of the Birds and Habitats Directives was only an issue for the national government and a small group of involved actors. The awareness of the impact of EU directives grew after nature conservationists appealed to European legislation to start lawsuits against different plans and projects. Famous examples are protests against the construction of a business park in Heerlen and against the new highway A73 (Beunen, 2006). Due to these lawsuits, several plans and projects were annulled in court. From that moment developers, policy makers, and decision makers started to realise that the

Birds and Habitats Directives could be used to change the context of decision making and influence the outcomes of the decision making processes. With this awareness of the effects of the Birds and Habitats Directives on decision-making, the number of contexts in which the directives were interpreted and applied grew. The implementation of the Birds and Habitats Directives was no longer only an issue for the national government; it also became an issue for many other actors on other levels as well. Local and regional authorities needed to take these directives into consideration when they wanted to adapt spatial plans or give consents for specific projects and activities. Project developers had to pay attention to these directives when they were preparing projects which often implied a careful assessment of possible negative effects on protected species or habitats. Farmers needed to consider the directives when they were planning an extension of their farm.

For most of the actors operating in the Dutch planning arena the Birds and Habitats Directives were seen as new obstacles in the decision making process necessary to achieve their goals. Soon they learned how to tackle these obstacles, so that their plans and projects could continue. They prepared or avoided lawsuits by very pragmatically taking into account the procedural demands of the EU directives in their decision making. As a result only a few plans and projects were cancelled in the end because of these directives, although the number of lawsuits in which the Birds and Habitats Directives played a part grew from zero to almost a hundred per year (Beunen, 2006; Kistenkas & Kuindersma, 2005; Rekenkamer, 2007).

The Birds and Habitats Directives have raised a good deal of discussion and resistance (Beunen & Van Ark, 2007). Due to the emphasis that has been put on lawsuits and all the publicity about these lawsuits, the resistance to these European directives among local authorities, entrepreneurs and farmers has grown (Van den Bosch, 2007; Beunen, 2006). The idea that the new laws will restrict peoples' activities became widespread. Also there was an increasing uncertainty about the consequences of the Birds and Habitats Directives for planning and decision making and for activities and developments in and around protected nature areas. As a result the bureaucratic and legal aspects of the European directives became to dominate in the planning processes. Consulting companies and legal advisers have been hired to make sure that the decision making process meets all of the directives' formal requirements. Because of the emphasis on formal compliance with nature conservation laws, the directives' main objective of biodiversity conservation was sidelined.

This way of decision making has retarded many decision-making processes, and even though only a few plans and projects have been cancelled due to nature conservation legislation, the prevailing idea among many Dutch actors is that European directives frustrate almost every development in the Netherlands (see for example the many



articles that have been published in newspapers or letters that have been send to the responsible minister (Table 3-1)). Project developers and decision makers tried to gain political awareness for “their problem” and demanded the responsible national authorities to provide clarity about the effects of the Birds and Habitats Directives. Nature conservationists also do not like the high number of lawsuits because they believe these lawsuits and the ensuing negative publicity about nature conservation laws undermine public support for nature conservation. Conservationists have also asked the national government to come up with a solution for this problematic situation (Broek & Schippers, 2002; Raad voor het Landelijk Gebied, 2002; Platform Soortbeschermende Organisaties, 2002).

The large amount of opposition raises the question of how the implementation of a European directive has evolved into a situation that most of the involved actors find unfavourable. Insights into the socio-political mechanisms that are at work in the process of policy implementation and how these policies and people affect the context and outcomes of decision-making might provide some answers.

### **Theoretical and conceptual frameworks on the relationship between policies and practices**

Implementation is an important issue among students of European policies (see e.g. Dimitrakopoulos & Richardson, 2001). Implementation can be framed, studied and analysed in many different ways (Hill & Hupe, 2009; Dolowitz & Marsh, 2000; Peterson, 2001) by different scientific traditions. Some for example use the concept of policy learning (e.g. Bomberg, 2007), others ‘policy convergence’ (Knill, 2005) or institutional approaches (e.g. Mahoney, 2004). Each approach uses different methods and focuses differently on the process and each approach comes with its strengths and weaknesses. Our analysis is largely based on discourse analysis and interpretative approaches (Fischer, 2003; Hill, 2003; Hajer, 1995; Yanow, 1993). Within these approaches policies are only ‘real’, meaningful and useful after different stakeholders have interpreted them. The reality people perceive is considered not to be a mirror of reality but a construction that is produced in a hybrid of social, political and scientific practices. Depending on the discourse (the socio-cultural background, political, institutional contexts, relations of power and other factors), people will interpret the social and material world in various and sometimes conflicting ways (Foucault, 1994; Flyvbjerg, 1998; Hajer & Wagenaar, 2003; Van Assche, 2004; Yanow, 2000). Within policy analysis these interpretative approaches can be traced back to Majone and Wildavsky’s famous article: ‘Implementation as evolution’.

Majone and Wildavsky (1979) argued that the results of an implementation process are not predictable and the outcomes are likely to be different from those sought by any

single participant (Majone & Wildavsky, 1979). To underpin their argument that policies can develop and change in several ways during implementation, they use the metaphorical comparison between a policy and an organism that evolves through interaction with its environment. According to Majone and Wildavsky, a policy can be seen as an idea or a set of ideas about a specific policy item. Policy implementation is then the struggle over the realisation of these ideas. What evolves during the implementation process are the ideas about how a policy should be interpreted and how it should be applied.

From this perspective, the meaning of a policy is not an intrinsic element of a policy; people who interpret and apply the policy give it meaning (Yanow, 1993). This implies that the struggle over ideas that characterises policy formulation does not stop once a policy is drawn up but continues during its implementation. Implementation can thus be seen as a process in which different actors who are involved in the implementation process constantly interpret and reinterpret policies, laws, or directives and therewith constitute a specific meaning within a specific context. Still, the outcomes of an implementation process often maintain some relationship to the ideas of the policy formulators, which suggests that the interpretation and application is somehow guided by the policy: "Policy content shapes implementation by defining the arena in which the process takes place, the identity and role of the principal actors, the range of permissible tools for actions, and of course by supplying resources" (Majone and Wildavsk, 1979, p. 174). Initial policy choices may restrict subsequent evolution, so that a kind of path-dependency influences the course of policy (Pierson, 1996). Simply stated: policy shapes implementation, but it does not determine it.

In the evolutionary process of implementation, actors, ideas, decisions, actions, and outcomes are all considered to be potentially interrelated. Only if we can get more insight into these multiple relations is it possible to see why a certain policy works in a specific way and gives specific results. According to Jensen & Richardson (2004), this insight is necessary before the quality of a policy and its desirability of and use for changes can be discussed: "Understanding more about the interweaving of policy discourse with our continuous making and remaking of everyday lived space seems an attractive and necessary challenge" (Jensen and Richardson, 2004).

Our analysis has the 'interpretation as evolution' metaphor as a point of departure. To focus our analysis we distinguish between mechanisms of divergence and mechanisms of convergence. By divergence we refer to the mechanisms that cause people in different context to constitute various meanings and uses of the same policy. This cause a divergence from the policy meaning that the formulators of a specific policy had in mind. Convergence refers to all the mechanisms that reduce or undo the consequences of divergence. In our analysis we do not intend to give a complete or definitive overview of

diverging and converging mechanisms but to explore to what extent these concepts are constructive for explicating and explaining the implementation processes of the Birds and Habitats Directives in the Netherlands.

### **Mechanisms of divergence**

From our analysis of the implementation of the Birds and Habitats Directives in the Netherlands we derived different mechanisms and aspects that cause policy meanings to diverge. First of all there are always multiple interpretations of policies, which are always entwined with the interests of the actors involved. The number and differences of contexts in which a policy document is interpreted, in which a policy meaning is constituted and in which it is applied, are important reasons for the divergence of policy meanings. The way in which a policy is framed, for example, differs between European, national or local policy levels; each level finds different issues and different interests important.

Discussions about new European policies, for example include national interests and issues of fair competition between Member States (Peterson, 2001). Local and regional authorities tend to focus on a different level of scale and in general pay much more attention to the issues that are relevant to them and on how these issues are influenced by European policies. National authorities are ought to protect national interests in their discussions with other Member States, while on the other hand they are also responsible for the implementation of European policies within a specific country. Local entrepreneurs, farmers and citizens have to deal with European policies (or the transposition into national legislation) when they want to extend their business or when they plan new activities and need a consent. Their knowledge about these policies is often limited to what is written about these policies in newspapers or magazines.

Issues and interests also differ between situations at the same policy level. Each member state deals with a different context, different habitats and species that require protection, different land use activities, different interests etc. and these largely effect in what context the European policies are interpret and applied. An international comparison of the most important issues related to the Birds and Habitats directives in different Member States for example shows that the effects on port development got a lot of attention in the UK and the Netherlands while this was hardly an issue in Flanders or Germany (Bouwma et al, 2008). Also within Member States the issues can vary between regions. The possible restrictions for agricultural development that might come along with the implementation of the Habitats Directive is a major issue in the Netherlands, but especially in the southern and eastern regions where vulnerable peat lands are suffering from nitrification.

The number of contexts in which a policy is given meaning is different for each policy. Some policies, like the European Birds and Habitats Directives, affect many planning and decision making practices while others are implemented in close cooperation with a small number of actors, for instance, a specific industry. The more contexts in which a policy is interpreted and applied, the more its meanings are likely to diverge. Likewise, the more dissimilar these contexts are, the more divergent the policy meanings will be.

The policy itself can also be seen as a factor influencing its divergence. Policies often contain vague or ambiguous words and concepts that can easily be interpreted differently. The concepts “significant effects” and “imperative reasons of overriding public interest” that are mentioned in article 6 of the Habitats Directive and that play an important role in the decision making about plans and projects that might affect protected areas, are interesting examples of such vague concepts. In the Netherlands these concepts were subject of a lot of discussion about what they meant and about how they should be applied in formal procedures (cf. Beunen & Van Ark, 2007).

These ambiguous concepts are the result of negotiation processes in which the policy loses its precision in order to get all parties to agree with the policy. Ambiguous formulations are particularly used in European policies because all member states should unanimously agree with the final formulation of these policies (Scharpf, 2006; Dimitrakopoulos & Richardson, 2001; Fairbrass, 2000). During the implementation process actors have to find out and to negotiate what those vague concepts mean within a specific context. The fact that policies and policy concepts, partly due to their sometimes vague formulations, are multi-interpretable, strengthens the possibility of strategic interpretations for the sake of the actors' interests at all levels and in all decision making contexts. The power play that the policies become part of is another important mechanism that causes policies to diverge. The Birds and Habitats Directives that were studied for this paper are examples of European directives that not only affect nature conservation but also many other socio-spatial activities such as agriculture, fishing, urban development or road construction. Almost without exception in high dense populated societies people compete over space and EU environmental policies have become an important element in this struggle (e.g. Beunen, 2006; Hajer, 2006; Jensen & Richardson, 2004). In their struggle for space, the actors that are attached to these activities also compete over the interpretation and application of the Birds and Habitats Directives. In doing so, people intentionally or unintentionally interpret and apply policies and laws that support their own ideas and interests. As a result, changes in the meaning of a policy also occur over time because aspects that affect the interpretation of a policy, such as viewpoints, motives, ambitions, knowledge, and culture are dynamic and also change over time.

## **Mechanisms of convergence**

Convergence is a mechanism that is the result of intentional and unintentional processes or strategies that aim to reduce or undo the divergence of policies. Policy convergence is a concept that is used in different ways for comparative public policy research (Busch & Jörgens, 2005; Drezner, 2001; Heichel *et al.*, 2005; Knill; 2005). We have mainly focussed on the convergence of policy meaning in local and regional practices while taking into consideration that processes and decisions on the national and European level heavily influence these practices. The European Union and national government make a strong effort to convince member states to implement policies as the EU wants these policies to be implemented. They also make attempts to harmonise the implementation of specific EU policies in the different member states in order to avoid economic inequality between the different member states.

One of the most important, mainly intentional, strategies is the production of strict rules or quantifiable objectives. These rules and objectives are often used to steer and control the implementation process. In the case of the Birds and Habitats Directives, the designation of the conservation areas and the necessity for member states to present regular reports on the implementation are an example of such control mechanisms. These aspects are easy to check and they enable a comparison between member states.

Another important strategy in promoting uniform implementation is to publish additional reports and guidelines that ought to make clear how a specific policy needs to be interpreted, what different concepts mean, and how the policy should be used. The EU has published many guidelines about how to implement the Birds and Habitats Directives, such as “Managing Natura 2000 Sites”, which provides member states with more information about how Article 6 of the Habitats Directive should be interpreted, or “Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites”, which helps actors to make an appropriate assessment following the Birds and Habitats Directives. On a national level, the Dutch Ministry of Agriculture, Nature and Food Quality has published several reports and even opened a website ([www.natuurloket.nl](http://www.natuurloket.nl)) to provide more information about the purpose of the European nature conservation laws and about how these laws should be used in planning and decision making.

Case law is another strategy that is often used to prevent different legal interpretations that inevitably arise once laws get applied in different contexts. Here, rulings of national or international courts (ECJ) are necessary to provide a definitive interpretation of a law or a directive in case of a dispute or diverging views. The ECJ is the final court of appeal in cases pertaining to the EU and its treaties, but also the ECJ is a major source of advice and support to the national court. The EU has published much of the ECJ case law regarding the Birds and Habitats Directives in a booklet in the hope that it will help to “build a common understanding of both directives” (Commission, 2006).

Divergence can also be limited by communication and deliberation strategies. Communication and deliberation about the meaning and application of a policy can be done between different policy levels but also between actors that deal with similar issues in different places (cf. Stone, 2004; Wolman & Page, 2002). Communication between the EU and member states or between national governments and local stakeholders are an example of the first. Provinces or municipalities that formulate a joint research assessment, so that they can learn from each other's experiences are an example of the latter. Member states that communicate, cooperate and share information through workshops, benchmarks etc., because they want to learn from implementation processes in other member states are another example (see e.g. Bouwma et al., 2008; Holzinger & Knill, 2005). People can also use publicity or advertising campaigns as a means to limit the diverging mechanisms. Although this does not imply that all people come to share the same idea, the campaigns can raise more awareness for specific ideas. The Dutch national and provincial authorities, for example, have used public hearings to emphasise the importance of international nature conservation and to inform people about the Birds and Habitats Directives. This has made it possible to explain why European policies were necessary in an interactive setting (Ministerie van landbouw natuur en voedselkwaliteit, 2007).

## **Discussion**

In this paper we have characterised the implementation of European policies as an evolutionary process. We have analysed some of the diverging and converging mechanisms and strategies that are at work during the implementation process in order to gain a better understanding of how European policies affect planning and decision making practices in the different member states.

Our study shows that the EU environmental policies are interpreted and applied in a wide range of planning and decision-making practices and that policy meanings are thus constituted in many, different contexts. European policies, that are often formulated a bit vaguely because various Member States have to agree and because these policies have to be applied in different context, cause uncertainty about their meanings in a specific context and discussions about the meanings of specific procedures, concepts that are used and about the intended outcomes. Although policies do not determine the way they are implemented, they do shape their implementation (cf. Majone & Wildavsky, 1979). However, policies alone do not explain the implementation process. Just as important are the political struggles about the meaning of policies, about spatial objectives, and about the rules of decision making that take place at many different levels and places. The involved actors, such as the European Union, national governments, local and regional authorities, interests groups, and individual

entrepreneurs and citizens are all influencing the way in which a policy meaning is constituted and therewith how the policy is implemented in specific practices. Their interpretations and their actions and reactions affect what happens after a policy is implemented. Although all these actors influence the process, none of them can control it and, as such, the results of these implementation practices are always partly unpredictable.

Policy implementation can be characterised as an evolutionary process in which diverging and converging mechanisms affect the way a policy comes into practice. Convergence and divergence can be studied on different levels. Because of the ongoing processes of globalisation and Europeanization (Featherstone & Radaelli, 2003; Schmidt, 2006), policies in different member states are showing more and more similarities. Nevertheless, policy convergence on the formal or national level between EU members does not exclude the fact that divergence occurs on the local and regional level.

Nature conservation policies in the different member states show many similarities after the formal implementation of the Birds and Habitats Directives, but member states still differ enormously in how these policies are interpreted and used in planning and decision making processes (cf. Bouwma *et al.*, 2008). EU policies need to be interpreted and applied in many different contexts and this inevitably leads to different policy meanings. Implementation is a continuous process of action and reaction. People interpret what has happened elsewhere and respond to that. People respond to each other and to the different actions already taken. Nobody can predict or fully control the implementation process because the process involves many actors and because the policies are given meaning in many different contexts. During the implementation of policies, many actions and decisions can be taken that could not have been predicted at the moment that the policy was formulated. Converging actions can only limit the divergence of policies, but they cannot prevent it (cf. Holzinger & Knill, 2005). Policy research towards the diverging and converging mechanisms can help to gain a better insight in the implementation processes. It can also temper unrealistic expectations about these policies. Researchers could study how ideas and meanings are constituted, reproduced and changed during the implementation process. Our analysis provides some useful insights in the mechanisms at work. While many of the mechanisms are unconscious and unintentional and thus cannot be affected, others can be used intentionally and strategically during the formulation and implementation of the policies. The ongoing analyses and evaluations of implementation processes are part of the evolutionary process of policy implementation, and though their effects are unpredictable, they do provide a useful basis for reflections on the outcomes of European policy implementation.

**Table 3-1.** Overview of articles in newspaper

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Gelderlander (2009) LTO ziet draagvlak voor natuurbeleid wegebben. February 25, 2009.
Brabants Dagblad (2009) Natuurbeschermingswet bedreigt boeren. February 25, 2009.
De Stentor (200) Boeren klemvast door Natura 2000. Februari 27, 2009.
De Stentor (2009) Werkgevers vrezen gevolgen Natura 2000. August 10, 2009.
Gelderders Dagblad (2008) Waarschuwing gevolgen nieuwe natuurgebieden. October 8, 2008.
De Gelderlander (2008) Nieuwe natuur nadelig. October 8, 2008.
De Stentor (2008) Natura baart grote zorgen. April 1, 2008.
Cobouw (2006) Metaalunie: Vogel en Habitatrichtlijn remt Nederlandse economische groei. November 11, 2006.
Telegraaf (2006) Watersporters vrezen gevolgen Europese natuurbeleid. June, 13 2006.
Wegener Dagbladen (2003) Natuurregels staan economie in de weg. July, 23, 2003.
NRC (2000) Bedreigde dieren schrik van bestuurders. March, 29, 2000.
Cobouw (2007) Bouw te vaak gekweld door flora en fauna. September, 28, 2007.
Staatscourant (2008) Natuurbescherming leidt tot serieus banenverlies. May, 15, 2008.

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## References

- Barnes, P. M. & I. Barnes (1999) *Environmental Policy in the European Union*. Elgar, Cheltenham.
- Beunen, R. (2006) Nature conservation legislation & spatial planning: for better or for worse? *Journal of Environmental Planning and Management* 49 (4): 607-621.
- Beunen, R. & R.G.H van Ark, 2007. De politieke dimensie van Natura 2000. Hoe wil Nederland het EU-beleid uitvoeren? *Landschap* 24 (1): 13-20.
- Bomberg, E. (2007) Policy learning in an enlarged European Union: environmental NGOs and new policy instruments, *Journal of European Public Policy* 14 (2): 248-268.
- Bouwma, I.M., D.A. Kamphorst, R. Beunen & R.C. van Apeldoorn, 2008. Natura 2000 Benchmark; A comparative analysis of the discussion on Natura 2000 management issues. WOt-rapport 90. Statutory Research Tasks Unit for Nature and the Environment, Wageningen.
- Broek, J.H.G. & E.I. Schippers (2002) *Soorten en Maten. Beleidsadvies VNO-NCW, VNO-NCW*, The Hague.
- Busch, P.O. & H. Jörgens (2005) The international sources of policy convergence: explaining the spread of environmental policy innovations, *Journal of European Public Policy* 12 (5) 860-884.
- Chilla, T. (2005) EU-Richtlinie Fauna-Flora-Habitat: Umsetzungsprobleme und Erklärungsansätze, *DISP* 163 (4): 28-35.
- Coffey, C. & S. Richartz (2003) *The EU Habitats Directive: Generating Strong Responses*, Project Deliverable No. D 17. Institute for European Environmental Policy, London.
- Commission, European (2006) *Nature and Biodiversity Cases. Rulings of the European Court of Justice*. Office for Official Publications of the European Communities, Luxembourg.
- Vries, J.R. & Beunen, R. (2009) Planning van Natura 2000 gebieden. Vergelijkend onderzoek Nederland – Engeland. *Landschap* 26 (1): 35-43.
- Dimitrakopoulos, D. & J. Richardson (2001) Implementing EU public policy. In J. Richardson (ed.), *European Union: Power and Policy-Making*. Routledge, London.
- Dimitrova, A. & B. Steunenberg (2000) The Search for Convergence of National Policies in the European Union: An Impossible Quest?, *European Union Politics* 1 (2): 201-226.
- Dolowitz, D.P. & D. Marsh (2000) Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making, *Governance: An International Journal of Policy and Administration* 13 (1): 5-24.
- Dorussen, H. & K. Nanou (2006) European Integration, Intergovernmental Bargaining, and Convergence of Party Programmes, *European Union Politics* 7 (2): 235-265.
- Drezner, D.W. (2001) Globalization and policy convergence, *International Studies Review* 3 (1): 53-78.
- Fairbrass, J. (2000) *EU and British Biodiversity Policy: Ambiguity and Errors of Judgement*. CSERGE GEC 2000-04. Centre for Social and Economic Research for the Global Environment, University of East Anglia, Norwich.
- Fairbrass, J. & A Jordan (2001) European Union Environmental Policy and the UK Government: A Passive Observer or a Strategic Manager? *Environmental Politics* 10 (2): 1-21.

- Falker, G., M. Hartlapp, S. Leiber & O. Treib (2004) Non-Compliance with EU Directives in the Member States: Opposition through the Backdoor? *West European Politics* 27 (3): 452-473.
- Featherstone, K. & C.M. Radaelli (eds.) (2003) *The Politics of Europeanization*. Oxford University Press, Oxford.
- Fischer, F. (2003) *Reframing Public Policy: Discursive Politics and Deliberative Practices*. Oxford University Press, Oxford.
- Flyvbjerg, B. (1998) *Rationality and Power: Democracy in Practice*. University of Chicago Press, Chicago.
- Foucault, M. (1994) *Power. Essential Works of Foucault 1954-1984. Volume 3*. The New Press, New York.
- Gange, I & F. Van Waarden (2005) Between Structure and Incident. A Sociological-Institutionalist Approach to the Riddle of Transposition Delays of European Food Safety Directives. Bi-annual conference of the European Union Studies Association, Austin.
- Hajer, M.A. (2005) Coalitions, Practices, and Meaning in Environmental Politics: From Acid Rain to BSE. In David R. Howarth and Jacob Torfing (Eds.), *Discourse Theory in European politics: Identity, Policy and Governance*. Palgrave Macmillan, Basingstoke.
- Hajer, M. A. (1995) *The Politics of Environmental Discourse: Ecological Modernization and the Policy Process*. Clarendon, Oxford.
- Hajer, M.A. & H. Wagenaar (Eds.) (2003) *Deliberative Policy Analysis: Understanding Governance in the Network Society*. Cambridge University Press, Cambridge.
- Hajer, M.A. (2006) The Living Institutions of the EU: Analysing Governance as Performance, *Perspectives on European Politics and Society* 7 (1): 41-55.
- Heichel, S., J. Pape & T. Sommerer (2005) Is there convergence in convergence research? An overview of empirical studies on policy convergence. *Journal of European Public Policy* 12 (5) 817-840.
- Hiedanpää, J. (2002) European-wide conservation versus local well-being: the reception of the Natura 2000 Reserve Network in Karvia, SW-Finland. *Landscape & Urban Planning* 61 (2): 113-123.
- Hill, H.C. (2001) Policy Is Not Enough: Language and the Interpretation of State Standards. *American Educational Research Journal* 38 (2): 289-318.
- Hill, M. & P. Hupe (2009) *Implementing public policy*. Second Edition. Sage, London.
- Hill, M. & P. Hupe (2003) The Multi-layer Problem in Implementation Research. *Public Management Review* 5 (4): 471-490.
- Holzinger, K. & C. Knill (2005) Causes and conditions of cross-national policy convergence. *Journal of European Public Policy* 12 (5) 775-796.
- Jensen, O.B. & T. Richardson (2004) *Making European Space: Mobility, Power and Territorial Identity*. Routledge, London.
- Kaeding, M. (2008) Lost in Translation or Full Steam Ahead: The Transposition of EU Transport Directives across Member States. *European Union Politics* 9 (1): 115-143.
- Kistenkas, F.H. & W. Kuindersma (2005) Soorten en gebieden. Het groene milieurecht in 2005. *Wettelijke Onderzoekstaken Natuur & Milieu, Wageningen*.

- Knill, C. (2005) Introduction: Cross-national policy convergence: concepts, approaches and explanatory factors. *Journal of European Public Policy* 12 (5): 764-774.
- Knill, C. & D. (1999) How Europe Matters. Different Mechanisms of Europeanization. *European Integration online Papers (EIoP)*, 3 (7): <http://eiop.or.at/eiop/texte/1999-007a.htm>.
- Laffan, B. (2004) Multilevel Governance: Bears, Birds and Bogs: The Implementation of EU Nature Conservation Policy in Six States. European Institute, University College Dublin, Dublin.
- Lenschow, A., D. Liefferink & S. Veenman (2005) When the birds sing. A framework for analysing domestic factors behind policy convergence. *Journal of European Public Policy* 12 (5): 797-816.
- Mahoney, C. (2004) The Power of Institutions: State and Interest Group Activity in the European Union. *European Union Politics* 5 (4): 441-466.
- Majone, G. & A.B. Wildavsky (1979) Implementation as evolution. In J.L. Pressman & A.B. Wildavsky (Eds.), *Implementation: How Great Expectations in Washington are Dashed in Oakland: or, Why It's Amazing That Federal Programs Work At All, This Being a Saga of the Economic Development Administration As Told By Two Sympathetic Observers Who Seek to Build Morals on a Foundation of Ruined Hopes*. University of California Press, Berkeley.
- Ministerie van landbouw, natuur en voedselkwaliteit (2007) Nota van Antwoord. Inspraakprocedure aanwijzing Natura 2000-gebieden. Ministerie van landbouw natuur en voedselkwaliteit. Den Haag.
- Mörth, U. (2003) Europeanization as interpretation, translation and editing of public policies. In K. Featherstone and C.M. Radaelli (Eds.), *The Politics of Europeanization*. Oxford University Press, Oxford.
- Olson, J.P. (2001) Organising European Institutions of Governance. A Prelude to an Institutional Account of Political Integration. In H. Wallace (Eds.), *Interlocking Dimensions of Integration*. Palgrave Macmillan, Basingstoke.
- Paavola, J., 2004. Protected Areas Governance and Justice: Theory and the European Union's Habitats Directive. *Environmental Sciences* 1 (1): 59-77.
- Pedersen, L.H. (2006) Transfer and transformation in processes of Europeanization. *European Journal of Political Research* 45 (6): 985-1021.
- Pedersen, L.H. (2007) Ideas are transformed as they transfer: a comparative study of eco-taxation in Scandinavia. *Journal of European Public Policy* 14 (1): 59-77.
- Peterson, J. (2001) The choice or EU theorists: Establishing a common framework for analysis. *European Journal of Political Research* 39 (3): 289-318.
- Pierson, P. (1996) The Path to European Integration: A Historical Institutional Analysis. *Comparative Political Studies* 29 (2): 123-163.
- Platform Soortbeschermende Organisaties (2002) Brief informateur fractieleiders. <http://www.dasenboom.nl/archief/Briefinformateurfractieleiders03062002.doc>.
- Pressman J. & Wildavsky, A. (1979) *Implementation. How Great Expectations in Washington are dashed in Oakland*. University of California Press, Berkeley.

- Raad voor het Landelijk Gebied (2002) Voorkomen is beter... Advies over soortenbescherming en economische ontwikkeling. Raad voor het Landelijk Gebied, Utrecht.
- Rekenkamer, Algemene (2007) Bescherming van natuurgebieden. Algemene Rekenkamer, Den Haag.
- Richardson, J. (Eds.) (2005) European Union: Power and policy-making. Routledge, London.
- Ringeling, A. (2002) An instrument is not a tool. In Conference on Policy Instruments. McGill School of Law, Montreal.
- Scharpf, F.W. (2006) The Joint-Decision Trap Revisited. *Journal of Common Market Studies* 44 (4): 845-864.
- Schmidt, V.A. (2006) Procedural democracy in the EU: the Europeanization of national and sectoral policy-making processes. *Journal of European Public Policy* 13 (5): 670-691.
- Scholl, B. and T. Chilla (2005) Competing policy ideas and the implementation of European environmental policy. Discursive constructions of 'Nature' and 'Space' within the multi-level implementation process of the EU Habitats Directive. In 3rd ECPR-Conference. Budapest.
- Scott, J.C. (1998) *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. Yale University Press, New Haven.
- Stoll-Kleemann, S. (2001) Opposition to the designation of protected areas in Germany. *Journal of Environmental Planning and Management* 44 (1): 109-128.
- Stone, D. (2004) Transfer agents and global networks in the 'transnationalization' of policy, *Journal of European Public Policy* 11 (3): 545-566.
- Van Assche, K. (2004) Signs in time. An interpretive account of urban planning and design, the people and their histories. Wageningen University, Wageningen.
- Van den Bosch, F.J.P. (2007). *Draagvlak voor het Natura 2000 gebiedenbeleid onder relevante betrokkenen op regionaal niveau*. Wettelijke Onderzoekstaken Natuur & Milieu, Wageningen.
- Wallace, H. & W. Wallace (Eds.) (1996) *Policy-Making in the European Union*. Oxford University Press, Oxford.
- Weber, N., & Christophersen, T. (2002) The influence of non-governmental organisations on the creation of Natura 2000 during the European Policy process. *Forest Policy and Economics* 4 (1): 1-12.
- Wolman, H. & E. Page (2002) Policy Transfer among Local Governments: An Information-Theory Approach, *Governance: An International Journal of Policy and Administration* 15 (4): 477-501.
- WWF (2001) *A Race to Protect Europe's Natural Heritage*. European snapshot report on the status of implementation of the Habitats Directive. WWF European Policy Office, Brussels.
- Yanow, D. (2000) *Conducting Interpretive Policy Analysis*. Thousand Oaks, London.
- Yanow, D. (1993) The communication of policy meanings: Implementation as interpretation and text. *Policy Sciences* 26 (1): 41-61.
- Yanow, D. (1996) *How does a policy mean? Interpreting policy and organizational actions*. Georgetown University Press, Washington.

# Chapter 4

Laws, people and land use



Public policy is often implemented through formal laws. In contrast to the typically optimistic ex-ante analyses of the impact of a set of laws, in retrospect it may be hard to determine what the laws concretely produced. Particularly complicated to measure are the unintended and indirect effects on actors or values that were not the prime focus of the law. Despite the literature on these matters in other fields of research, among planners the theory of law implementation receives relatively little attention. This attitude may stem from the means-ends rationality that has been common to planning for so many years. This paper makes a plea for focusing on the interaction between people and laws so as to understand the outcomes. We do this by drawing insights from sociological perspectives on laws.

T. van Dijk & R. Beunen (2009) Laws, people and land use. A sociological perspective on the relation between laws and land use. *European Planning Studies* 17 (12): 1797 - 1815.

## Introduction

Laws, being systems of rules established in order to guide individuals or organisations, entail the acts, by-laws, ordinances, codes and decrees with which we formalise agreements on the organisation of society. For a planner, laws influence what changes can actually be achieved in the social and physical reality we address. They set limits to the extent to which actors can influence other actors' properties (constitutions, public administration laws, real estate legislation) and provide the proper policy instruments with which to intervene, in other words the "possibilities which are legally available to public bodies for the steering of certain processes in order to achieve certain desired effects" (Needham, 1982: 3).

Almost every developed country in the world applies laws that pertain to land use and in particular the changes in land use. The UK Planning and Compulsory Purchase Act 2004 or the Dutch *Wet op de Ruimtelijke Ordening*, for instance, contain procedures and guidelines for making formal laws on the local level that restrict the way land is used. There are also many environmental laws that affect land use and spatial organisation, like nature conservation laws or water quality laws. And there are laws, not specifically aimed to guide spatial developments, that do nonetheless affect the physical world around us (lease acts, mortgage legislation). Each application of a law, or policy instrument in general, is a measure: "a measure is the use of a particular instrument at a particular time in order to promote one or more objectives" (Ibid). It is through these measures that laws can take effect on concrete instances.

Of all the types of laws that can be discerned, for us the most important classification is that of prescriptive and descriptive law. With prescriptive we refer to laws that are formulated to *modify* (prescribe) the way people tend to interact in the status quo, with descriptive to laws that are formulated to *codify* (describe) the prevailing and desired modes of interaction, adding to their stability and legitimacy? Land use is foremost relevant to these two types. Land use is both an object of deliberation and subsequent intervention with modifying laws, and an asset that generated codification of how people handle property rights, which would place our subject primarily in administrative law.

In this paper we will elaborate on the fact that the output of laws, their narrow range of deliberate effects, are rarely the same as its outcome, that is the total impact including unintended effects, if any. Outcomes are known to be unexpected and deviate from what was intended to happen. Laws protecting Greek forests evoke forests being set fire in order to get building permits. Laws that are supposed to preserve nature make farmers fear that rare species will restrict their business and make them cease to develop hedgerows or amphibian ponds on their lands. Project developers even plough building sites in order to prevent specific species to live there. Laws that were supposed to increase consideration of environmental issues in plans, enforced environmental impact

assessments, however mainly leading to a costly environmental impact assessment avalanche that hardly changes the actual course of things. Laws on US municipal incorporation and annexation are supposed to secure individual autonomy but generate economic segregation and sprawl. Different laws related to land use have one thing in common: there are always unintended consequences – sometimes they are the only consequences.

The role of law is an important theme for planning research that deserves more attention. The role of law as a collection of policy instruments is still either neglected or simplified, despite attempts to connect law to the social reality throughout the former century (Ehrlich, 1936; Aubert, 1966; Fuller, 1969; Black, 1976; Kidder, 1983; Mintzberg, 1989, p.258; Soeteman *et al*, 1991; Garth and Sarat, 1998; Campbell and Russo, 1999; Rossi *et al*, 1999). However: 'Law is too important to leave it to lawyers' (Salet, 2002). We agree with the elaborate argument by Griffiths (2003) on the unacknowledged complexity of the implementation of laws. Griffiths is at pains to demonstrate that, because law really is a specific form of social control, no effect from laws can be understood without taking a social perspective. The institutional turn in planning theory (cf Gualini, 2001) relates to the theme of this paper but pays attention particularly to high level social structures, often informal in nature, rather than the laws – formal institutions - that guide the way land is used.

The fact that, in practice, planning and environmental laws are essential tools to implement land use policies, makes it even more striking that we – planners - hardly subject the relation between law and land use development to theory development, especially in Europe. Instead, there is quite a lot of literature of a descriptive nature, in which case studies are presented to show how legal instruments were used and what their performance was.

We claim that, before we can understand how laws affect the way land is used, we need to understand how laws are made, changed and used *by human beings*; people are always between laws and space. Laws do not do anything themselves. As Cullingworth and Nadin (2002, p.76) put it, '...it is important to appreciate at the outset that the formal system is one thing; the way in which matters work out in practice may be very different.'

How can we understand the behaviour of the people that are affected by the laws? The aim of this paper is to theorise on the relation between laws, people and land use. In order to do this we develop a sociological perspective on the effects of laws on spatial organisation, inspired on the work of Griffiths. Section 2 explains in more detail the purpose of our study and our method for inquiry into the subject. The interpretive minds of people are the focus of section 3 and consequently a conceptual model for analysing outcomes of laws is provided in section 4. The model is then illustrated with three



examples in section 5. Section 6 discusses how the planning community could deal with the unexposed human factor in land use regulations.

## **Method**

### *Addressing the instrumentalist view on laws*

We depart from the assertion that there is a dominant discourse within policy and planning in which laws are treated as tools. In this view instruments are expected to produce an output directly and on their own, based on a means-end rationality. In this view, the human factor is taken out of the equation, by assuming it to be rational, constant and predictable. It has been applied on many occasions to planning regulations like zoning, particularly in the US (Fischel 1985; Ellickson 1973; Siegan 1972). It falls short in explaining institutional design, change and performance, mainly due to the (implicit) assumption of rationally and economically acting agents (Buitelaar, Lagendijk & Jacobs 2007); the effect of institutions can be explained only by looking at the institutions –like zoning- and their outcomes, leaving out the human factor.

We do agree that laws change the conduct of people relevant to spatial organisation of land use. Ignoring laws is hardly an option in most cases because enforcement or incentives are of considerable importance to any one's deliberation on what to do. But what an actor eventually concretely decides to do is less compliant or predictable, because it entails multiple considerations and emotions as well. This pluralism in normative systems between actors has emerged as a major theme in law-related research (see for instance the study by Sadurski, 1999).

This notion of unpredictability seems to fail from the minds of law makers: there is a great believe in the effectiveness of rules, and insufficient knowledge of how people respond to laws, and how laws affect their habitual behaviour. This instrumentalism assumes (1) atomic individualism, (2) perfect communication between legislator and subjects, (3) normative monism and (4) an autonomous legislator. The conceptual separation of thinking from doing, of planning from deciding and implementing, must be considered the most serious pitfall of applied systems analysis (Majone and Quade, 1980, p.20; Pressman and Wildavsky, 1973 p.143); questions about implementation to an instrumentalist become questions about compliance and performance rather than about problem solving. Compliance is neither relevant nor viable, as people are creative problem-solvers, to an important extent driven by intentions derived from instincts and socially constructed ends.

### *Intractable schism*

The discussion on institutions and behaviour is by no means new and we do not aspire to resolve it. In fact, there is a schism running through social sciences at large for a long time already that still cannot be pinned down. As Bevir (2004) compactly postulates, 'individuals are always situated within social contexts, but this leaves open the possibility that they are situated agents who can innovate against the background of such context and even thus constitute themselves and their context (...) we should conceive of people as situated agents or as the passive constructs of discourse.'

Should we take institutions as a given with individuals adjusting their behaviour ('structural functionalism'), or should we take the institutions as being subject to constant adaptation by the individuals ('functional structuralism'), a distinction that the sociologist Luhmann was one of the first to put to debate (Luhmann, 1966, p.103). As the case studies in section 5 show, a system emerges because of, or thanks to, a certain cultural constellation. A system is a reflection of ideology with regard to the role of the government and the autonomy of individuals.

Luhmann in his later works specifically interrogated the sociological theories in relation to law (Luhmann, 1985; see Van Assche and Verschraegen, 2008 for the relevance of his work for planning) and develops a theory of autopoiesis, one aspect of which is society composed of normatively closed systems that interact. The normative closure makes systems self-referential. Systems of law also self-reproduce their own truths. Validity of law, according to Luhmann, does not come from its social environment, but the law is the sole judge of whether law itself is lawful or unlawful (Priban and Nelken, 2001, p. 6).

However persistent self-referential systems like law, all systems do interact in social life. Society adjusts law and law adjusts social life. Pound (2002, p. 67) ponders over the question whether a man's desire to keep his golden watch to himself is satisfied by laws on private property, or whether the law has taught us to claim things as owners. Recently, much has been written in the functional structuralism tradition. Formal frameworks even if they would be completely codified, are always subject to interpretation, manipulation and avoiding behaviour. As Cullingworth and Nadin (2002, p.76) put it, '...it is important to appreciate at the outset that the formal system is one thing; the way in which matters work out in practice may be very different.' Indeed, a government, like organisations in general, is not a machine (Morgan, 1986) that generates output depending on its characteristics and the input it gets. It is complex, biased and path-dependent. Using laws and using laws in a specific way is not a tool that may be tuned to reach an optimal effectiveness, but an expression of ideology, thus maybe bearing adverse connotations from the past or incorporating principles of government intervention that stem from fashionable discourses rather than considerations of effectiveness (Ringeling, 2002).

As with many schisms, the truth is somewhere in between – institutions and people interact (see Giddens’ duality in his theory of structuration (Giddens, 1986) and Hay’s strategic-relational approach (Hay, 2002)), indeed, they even presuppose each other. The publications cited here show that this might be a distinction that is impossible to pin down.

#### *Case selection and data collection*

Considering the fact that we do want to critically reflect to instrumentalist thinking, meanwhile facing the intractability of structure and behaviour, our contribution here is to present a model for a more balanced perspective. In the paper we furthermore seek to sustain our argument by presenting a diverse set of cases that show the relevance of including the social working of laws in studying the effects of laws on eventual land use patterns. We used the diversity of cases to emphasise the broadness of the issue at stake. We limited the cases to one country in order to avoid discussion on the case’s divergent specific institutional and cultural differences, that would distract from the essence of our argument. Not the system is our focus but how people respond to laws.

The alternative model we put forward in this paper emanates from the authors’ involvement in research projects, in which the outcome of two respective cases of legislation was studied: implementation of the Habitats Directive and municipal pre-emption rights (both with respect to the Netherlands). Originally being a trigger for inquiry and reflection, we chose to use them again here as illustrations to the model.

In search of material to complement these two cases, we consulted the Dutch jurisprudence website “rechtspraak.nl” to see what are the most frequently reported land-use related law suits that linked to one specific piece of legislation. The emergence of much jurisprudence indicates that people disagree over the way that specific law should be implemented, which makes it interesting for this paper. Law suits ranking highest on the website were the two cases already chosen, as well as the case of zoning plan exemption.

The thus compiled selection of cases provides an interesting mixture in terms of the layers involved: the Habitats Directive trickling down from the European level, municipal pre-emption that involves the chain of state-local government and citizen, and finally the zoning-plan exemption that is foremost an interaction between state and municipality. Of course, the set of cases is still selective and we do not claim the set to generate findings that are representative for any law. The set does however suffice to illustrate that over a range of interventions-by-law, outcomes appear to be to an important extent different or adverse to what was initially intended, because the people interpret and put it in a wider decisional framework.

The data we used for this paper was mainly adopted from literature, our past experiences on the cases and reflective discussions with colleagues in the field. Selecting cases with much jurisprudence meant that the literature and that law's implementation was relatively abundant. We did not conduct additional interviews or surveys for this paper. Because what we did was in fact a type of ex-post evaluation, the most recent legislative changes are not included, as social interaction with recently adapted laws (2007 onwards) was neither clear nor studied.

### **Laws meeting interpretative minds**

What strikes us is that instruments are sometimes described as if they act themselves. This personification of instruments contradicts with our view, in which *people* make and use laws or policy instruments. Space is only affected by laws *after* these laws are 'enacted' by people. This notion requires theories of laws that position laws within social context, with intervening variables between the policy instruments and its effects. There are direct (behaviour directly caused by the rule) and indirect effects (social consequences of the direct effects), primary or secondary effects (efforts by one person to secure conformity with the rule by another person) and special (application to a particular case) and general effects (other situations) (Griffiths, 2003, p.8-11).

A particularly elaborate plea for an interpretative perspective is put forward by Griffiths, stating that 'until we understand the complicated ways in which legal rules are used in everyday interaction, we will not be in a position to explain or predict much of real significance about the effects of legislation.' (Griffiths, 2003, p.3). 'Instrumentalism is incoherent because a general theory of the relationship between rules and their indirect effects is inconceivable.' (Ibid, p.20). Griffiths unfolds a theory of 'social working' of legal rules. His work was a primary source of inspiration for our attempt to link law and spatial planning.

### ***The people***

It is within the local planning and decision making practices (the shop floor of social life, in Griffiths' words) that we need to begin studying the effects of laws. The implementation of laws will vary across different circumstances because laws are general and fundamentally ambiguous and need to be interpreted and applied in different contexts (Gregg, 1999; Baer et al, 1988). This inevitably generates legal pluralism (Merry, 1988; Griffiths, 1986). Many people are involved in the implementation of laws and the interpretations, ideals, meanings, beliefs, and objectives of these people are important for understanding how people use laws. It is necessary to understand how all these aspects are interrelated with the organisational and institutional context the people work in. The interplay between people and the institutions in the implementation process is

thus an important aspect (Terpstra & Havinga, 2001; Dimitrakopoulos & Richardson, 2001; Hix, 2005; Edelman & Suchman, 1997).

During time people develop routines and conventions that become embedded in organisations, institutions and cultures. These routines and conventions are often referred to as policy styles, regulatory styles or implementation styles (Richardson, 1982; March & Olsen, 1989; Bakker & Van Waarden, 1999). These styles are influenced by political, juridical and governmental institutions and the structure of civil society. These regulatory styles in turn affect how laws are interpreted and applied within a specific case (Terpstra and Havinga, 2001). Norms and ideals about policy implementation and professional practices are important factors that influence both policy formulation and the implementation process; while some people might plea for a strict interpretation of laws, others are more likely to discuss the laws and focus much more on the desired outcomes.

### *Interpreting and applying the law*

An interesting concept that was observed in Dutch law evaluation reports was inspired by a passage from the classic 'The Little Prince' by De Saint-Exupéry. In that passage the prince is revealed the wisdom of good government, and that is that you can require obedience only when your demands are reasonable. Therefore, before assessing the effects of a law, one must take into account if the subject of the law is:

- aware of the existence of the law ('knowing'). The law may be insufficiently communicated, or it may be too complicated to understand to which situation the law actually applies in practice.
- able to obey to the law ('being able'). A local government, for instance, may be required to perform tasks for which they do not have the expertise, the financial resources, etc.
- committed to obey to the law ('being willing to'). Subjects to laws may have their own personal agendas. They then typically make cost-benefit analyses before deciding whether or not to obey the law: the chance of that his disobedience is detected, the weight of the punishment, etcetera. Thus, rules emerge of how to evade formal rules (Verkruyten *et al*, 1994). Lower tiers of government are also known to deliberately disobey higher level frameworks when they expect high profits of this disobedience.

It takes two to tango: the law as the institutionalised product of social interaction, and the people's cooperation toward the intentions of the legislator. Healey (1996, p. 200) distinguishes the social side as a specific object of interventions that has to accompany legislation. The social side is the object of what she calls the 'soft infrastructure' of relation-building that seeks to produce social, intellectual and political capital to promote

co-ordination and the flow of knowledge and competence among social relations existing within places. Coherent design of soft and hard infrastructure is not being achieved with any success in many parts of the western world (Ibid, p. 200).

A law should thus not be treated as a letter on a clean slate, but as something that is adopted in a complex system of existing rules, an institutional context: 'Rule following entails attention not only to primary rules of behaviour but also to a whole complex of secondary rules' (Griffiths, 2003, p.1). The key question thus is: how do the rules, as the local actors know it, fit into the whole spectrum of considerations – practical exigencies and the demands of competing rules – of which they must take account (Ibid, p.20).

To understand how rules are used in a broader more complex system of rules, we need to understand how people think about rules and interpret them. Empirical research into the application and the effects of rules has to be embedded in a discursive perspective. Applying laws are discursive practices, as much as all other actions. Although interpretative and discursive analysis are not new to planning (see e.g. Hajer & Wagenaar, 2003, Jensen & Richardson, 2004, Flyvbjerg, 1998, or Fischer, 1990) such an analysis is rarely used to study the application of (planning) laws, let alone in relation to land use.

### **Towards a conceptual framework**

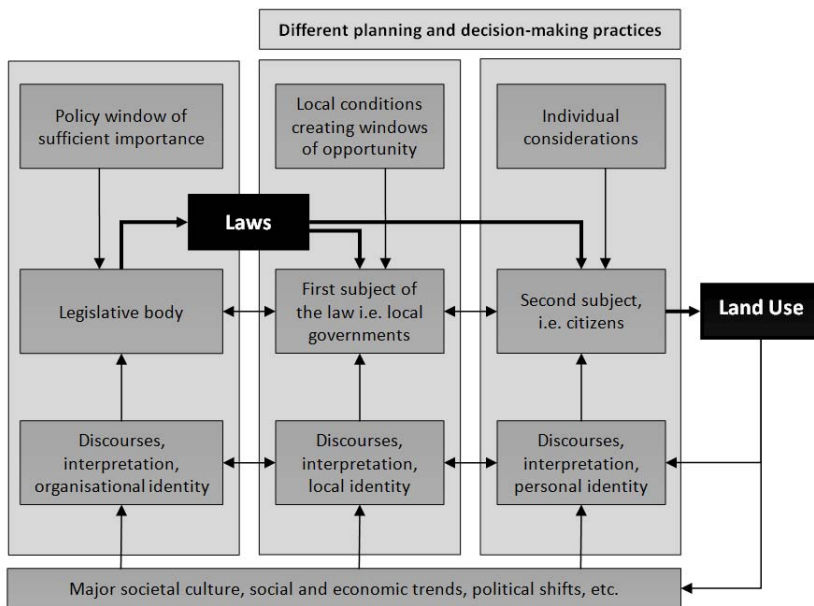
We start from a different ontology than many instrumentalist approaches. The focus in this paper is on the interaction between laws and people (and the effects on land use), not the laws (and the effects on land use). The question in that case should be threefold:

- which people affect land use? Land uses are influenced by the decisions and actions the people take. Laws might affect these decisions and actions but only *after* people take notice of, interpret and apply the laws. A distinction must be made between local authorities that apply instruments and the people whose personal considerations are influenced by these laws, like citizens and entrepreneurs. Both have an influence on land use, the latter more direct than the former.
- how are those people affected by the institutional framework that the instruments are part of?
- which other contextual issues are incorporated into their behaviour and how they react to laws? Indeed, laws are not the only factor that influence actions and decisions. People are not independent from their environment. They are influenced by institutions and discourses.

By taking this perspective, it will become clear there is a complex powerplay going on between several groups of actors, creatively and pragmatically finding their way in the

total institutional framework around them. This is the true issue that deserves research efforts: how does people's behaviour interact with the total perceived set of institutions?

There is a wide range of actors involved in planning by law, for instance, the administrators who draw the laws, the politicians that formalise the laws, the governmental employees that apply the laws, the recipients of the law, other actors that appeal to the law, and of course layers and judges. All these actors give meaning to specific laws. Therefore, the implementation policies evolve, changes, and adapts to different circumstances, through interactions (Majone & Wildavsky, 1979). Mintzberg (1989, p.285) discerns between intended, deliberate, unintended, emergent and realised streams of effects.



**Figure 4-1.** Conceptual Framework of the relation between laws and spatial organisation

An exploration through the literature on law, implementation, and spatial planning shows us several factors and mechanisms that are important when one wants to study how laws affect space. These aspects and mechanisms are presented in a conceptual framework (Figure 4-1).

The framework consists of three parts.

1. Laws that are interpreted and applied by people and affect planning and decision making practices.
2. Planning and decisions making practices that affect space.
3. Organisations, structures, and discourses that affect both 1 and 2.

The framework demonstrates that if we want to study the relationship between laws and space we have to make a detour. Not the laws should be the starting point, but the planning and decision making practices that are supposed to be affected by the laws. Laws only work if, and after, they play a role in these planning and decisions making practices. Within these practices we can study how decisions and actions affect space. These planning and decision making practices are influenced by many factors, among which are laws.

Studying the role of the laws in the planning and decision making practices is the next step. The role of laws can vary greatly. In some cases the planning and decisions making practices are only about the laws, in other cases the laws are only a small issue. It is important to notice that the laws only play a role after they are interpret and applied by people. We should thus study how people interpret and apply laws and how these laws affect decisions and actions. The interpretation of law as well as well as all other actions in planning and decision making practices are influenced by organizations, (other) structures, and discourses (see. e.g. the work of Hajer, Foucault, Luhmann). These influences should be part of the study.

Our non-instrumentalist meaning of 'law' (parallel to Griffiths' 'Social Working Paradigm') acknowledges that:

- legislator and subject interact (legislation is not a one-way street)
- deviant behaviour, such as disobedience and strategic use, are to a certain extent a fact of life as it is only one element in a constellation of rules (instead of an obstacle that needs to to be extinguished)
- disobedience is not necessarily framed as 'resistance', but often more appropriately as 'lack of local support'.
- the subject's discourse shapes its response to the law (each subject sees things differently)
- discourses are storylines, ways of meaning, even having their own semiotic language, potentially yielding diverging understandings and subsequent outcomes among discursive groups (society is not mono-perceptual)
- discourses are dynamic (while instrumentalism sees response of subjects to a rule as a constant)
- the law not only affects issues it was meant to affect, but has unintended, sometimes subtle, consequences as well
- especially in spatial planning, the legal message does not reach the relevant people directly but is transmitted by various intermediaries; a transformation process in which the message changes



### **Three cases of social working**

#### ***European Birds and Habitats Directive***

##### *Original scope and targets*

The European Birds Directive (79/409/EEC) and the European Habitats Directive (92/43/EEC) aim to protect natural habitats and the wild flora and fauna in the member states of the EU. Member States have to designate Special Protection areas under the Birds Directive and Special Areas of Conservation under the Habitats directive. Together these areas form a European network of protected areas, called Natura 2000. Member States also have to implement the directives into their own nature conservation laws. These laws form a framework for planning and decision making about activities that affect protected areas or protected species. All activities that might have significant effects on protected nature values need to be carefully assessed and may only be allowed if there are no alternative solutions and in case of overriding public interest.

##### *The effects*

There are many studies on the implementation of European environmental policies focusing on the formal transposition in national policies and the subsequent actions national governments take. In the line of our approach we studied the implementation of the Birds and Habitats directive at the level of planning and decision making practices (Beunen, 2006). The European Birds and Habitats directive received quite some attention in the Netherlands, much of it due to a nature conservation organisation that appealed to these directives in a successful way in a lawsuit against the construction of a business park (Van der Zouwen & Van Tatenhove, 2002; Verschuuren & Van Wijmen, 2002). This case made clear that European directives need to be taken into account in decision making even if they have not formally been transposed into the national laws. With this knowledge in mind, other people too started to use these European directives in their protest against all kinds of plans and projects. The number of law suits in which the Birds and Habitats directive played a part, increased from 2 in 1998 to about one hundred per year in the years between 2003 en 2008 ([www.rechtspraak.nl](http://www.rechtspraak.nl)) – and these law suits are just the tip of the iceberg. In many other planning and decision making processes, the Birds and Habitats directive and their possible consequences for the decision making process were discussed among the participants engaging in the process (Beunen, 2006).

##### *What the actors did*

Developers and local politicians anticipated to the potential power as they did not want to see their project frustrated by nature conservations, knowing that opposing parties

used this law to stop or at least influence these projects. Among opponents of building activities were of course nature conservation organisations, but also other people who for some reason opposed the plans of project start using nature conservation laws to object to these plans. Local residents, for instance, tried to use the Birds directive to prevent the development of an asylum-seekers' centre in their neighbourhood (LJN: AE5096, Council of State, 200103181/1). Other examples of decision making processes in which the Birds and Habitats directives played a role, are protests against new roads (LJN: AF0231, Council of State, 200200050/1), against new business park (LJN: AA9523, Council of State, 200004163/1), against new residential areas (LJN: AS7244, Council of State, 200401256/1), or against cockle fishing in the Waddensea (LJN: AT6572, Council of State, 200409107/1 & European Court of Justice C-127/02).

A review of the law suits in which the Birds and Habitats directive played a role showed that many plans and project have been delayed but that most of them nonetheless proceeded in the long run (Algemene Rekenkamer, 2007; Beunen, 2006; Kistenkas and Kuindersma, 2005). Interviews with decision makers at national and provincial level made clear that only a very small part of the requests for building permits were denied because they were in conflict with European nature conservation laws. We thus can wonder what the eventual effect of the directive has been in relation to the original targets. Cockle fishing in the Waddensea is one of the few examples of an activity that actually had to stop after several law suits (including a law suit at the European Court of Justice, (Case C-127/02)) and extensive ecological studies made clear that this activity conflicts with nature conservation laws. The laws thus largely failed to offer a more strict protection for species and habitats. Due to these laws however, farmers and project developers have become very cautious about possible legal consequences of the presence of protected species. In order to avoid such consequences they plough construction sites and are very reluctant to participate in nature conservation programmes.

### *Conclusion on 'social working'*

Following agreements in the European Union the Dutch government, the legislative body (Figure 1), adapted their nature conservation laws. For the first and second subject of the law these nature conservation laws provide a framework that they need to take into account when they take decision about specific (spatial) activities. Although the Birds and Habitats directive gained a lot of attention, their actual effect on land use is limited. What has changed are the procedures of decision making. Strict legal interpretations put more emphasis on the procedural aspects of decision making, like for example the presence of ecological reports. However, such reports are not used to promote nature conservation objectives, but to sustain decisions already taken. The necessity of such reports was

observed at court cases leading to projects and plans being cancelled. Courts have made decisions mainly by looking at whether the necessary reports were conducted, and not how these were conducted, or what was done with the results.

Most decisions that were annulled in court simply lacked awareness of the requirements of the Birds and Habitats directive. This is no surprise because most people simply did not know about the European directives or did not know how to apply them – owing to a lack of attention, knowledge or awareness. The court cases led to a growing awareness of the directives and many people learnt “how to deal with them”. They learned how to meet procedural requirements and what actions are necessary in order to avoid juridical problems that might delay or stop plans and projects. In this sense they have clearly modified their behaviour. However, we also have to conclude that most projects could go on in the long run and the number of law suits due to the Birds and Habitats directive decreased. Although there is indeed a growing awareness of the Birds and Habitats directive, that does not necessarily lead to a better protection of natural values (being the initial target). Instead, there has been a shift to more conflicts, and therefore more lawsuits and an increase of the cost of decision making because of the many reports that need to be made to sustain decisions. Decision making about nature conservation issues has thus become more bureaucratic and more legalistic. Some of the interviewed people for example told that they chose to ignore the nature conservation laws on purpose because they knew that nobody would object the plans. They made a strategic decision that ignoring the law and taking the risk that somebody would object the plan would be more successful than including the nature conservation law from the beginning of the decision making process. The law was thus interpreted, but not applied.

There are of course also cases in which the interpretation and applications of the Birds and Habitats directive sort spatial effects. Cockle fishing in the Waddensea for example was forbidden while in some other cases the developer agreed to provide proper nature compensation. A well-known example of the latter is the extension of Mainport Rotterdam (cf. Hommes et al, 2008). In this case nature conservationists referred to nature conservation laws in order to negotiate sufficient compensations. This result however was objected by the farmers union and fisherman, who used the Birds and Habitats Directive to object the plans (LJN: AS3915, Raad van State, 200307350/1). They feared that the nature compensation would conflict with their interests.

These examples show that nature conservation law is only one of the many aspects influencing planning and decision making practices. In (local) planning practices the Birds and Habitats directives have become new means that are used by competing actors. The European directives offer people means to object the way of decision making and the outcomes of decisions. Other people in return respond to these objections from their perspective. We noticed that in the decision making practices people not only “use” law,

but they also compete about the way the law has to be interpreted and applied. This meets one of the important arguments of Luhmann that political use of power through legislation does not, as widely understood, reside in its ability to put into effect specific purposes or to select the agenda for political debate, but rather in its ability to create restrictive frameworks for discussion and decision-making (King & Thornhill. 2003, p. 224).

### ***Pre-emption right act***

#### *Original scope and targets*

Dutch municipalities have dominated the developing sites for city extension for a long time by pursuing an active land policy. During the nineties, this was being contested by private real estate developers. As house prices increased, private parties started to strategically acquire land on potential housing sites. Municipalities were not the sole land developers anymore and their control over land use decreased slightly in terms of control over the type of houses to build and prospect of recouping sufficient money to the municipality for the construction of the needed infrastructure.

Therefore, the pre-emption right act (*Wet Voorkeursrecht Gemeenten*, Wvg; Stb. 1984, 619), that has been in place for urban renewal projects since 1985, was changed in 1996 to include urban expansion sites as well (Stb. 1996, 389). It thus provided the municipalities with the opportunity to obtain the right of first purchase for a limited period of time on a designated site. This way, law makers thought, municipalities would be able to return to their old role of acquiring land on future building sites and implement their housing policy and value capturing. The broad objective thus was to allow municipalities to regain their leading role in urban expansion.

#### *The effects*

When searching for effects, the instrumental question could be: how many municipalities choose to designate areas under Wvg law and how many actual acquisitions from first landowners by municipalities have resulted from that? The pre-evaluation of the Act (Korthals Altes and De Jong, 1998) provides evidence for a high conformity between the law's objective of restoring municipal control over land development and the wish of the municipalities (80%). Segeren (2007) has found that in 2006, two third of Dutch municipalities actually used the pre-emption right for over 40.000 hectares of land. Both meant a doubling of the numbers in the year 2000.

However frequently establishment of this temporary municipal right, the actual land acquisitions on the basis of Wvg by municipalities turned out to be modest. Groetelaers

(2004) published an extensive survey on these questions. She concluded that the actual acreage of land being transferred into municipal hands was quite poor indeed.

#### *What the actors did*

Groetelaers also finds unintended consequences, most of which were linked to circumvention of the law. The 1996 law renewal contained some clauses meant to avoid pre-emption right establishment from intervening with land transactions that had already started at the moment of establishment. Private developers soon used two ways to get around the Wvg. First, they could arrange with the landowner to sign an agreement of purchase, with the actual transfer of ownership postponed to some point in the future, depending on the actual establishment of a zoning plan for housing. This way, no actual purchase had taken place yet (avoiding risk of non-development) while their position under the Act was nonetheless secure because they had entered a process of land acquisition before establishment of pre-emption rights.

Secondly, developers started to establish joint ventures between them and the landowner, in order to jointly develop the land. The landowner would bring in the land and the developer the capital and know-how. This way a transaction (that would be illegal under that law on that site) would not have to take place. The latter option eventually was later successfully contested in court and the law was adapted in 2002 (Stb. 2002, 326).

#### *Conclusion on 'social working'*

The interaction between the legislator and the first subject of the law (left two columns in Figure 1) went according to plan, suggesting that their discourses on the role of local government in city expansion processes coincided. The state provided legislation helping to reinforce the role of municipalities. The municipalities applied the law with the same objective as the legislator designed it for as they had no reason to deflect. Up to this point, implementation of the Wvg was successful.

The catch was in the interaction between first and second subject of the law. The individual considerations with respect to land use included strong incentives for not selling off to municipalities, as both land owners and developers had too much to gain from finding a way around the law. As a consequence, the Wvg did not accomplish its direct goal, i.e. allowing municipalities to acquire a large share of the raw building land for new residential housing. Municipal land acquisition remained low despite the frequent establishment of municipal pre-emption rights on urban expansion sites.

The Wvg case shows just how hard it is to devise and install an effective law, even in a seemingly straightforward situation. This law clearly strived for restoring supremacy of local governments in land development (a perspective on governance that was rather

outdated compared to the actual land market situation) and underestimated the both creativity and determination of the actors involved in finding ways around it.

The law did have effect, however, because of the anticipative behaviour of the actors and new types of activities by the original landowners emerged. This may have reinforced the penetration of land developers in the peri-urban land markets. A more social perspective of the legislative could have *a priori* detected these effects.

### ***Zoning plan exemption***

#### *Original scope and targets*

The Dutch have a system of spatial plans on the three levels of government: municipal, provincial and national. The higher tier plans should concert the collection of lower tier plans underneath, enabling concerted land use between jurisdictions. The municipal zoning plan is based on local considerations and prescribes in detail which land use is allowed where, but has to comply with the more strategic provincial spatial plan. The national spatial plan is a document containing the long term national spatial policies and is the frame for provincial planning. Only the municipal zoning plan is legally binding. This three layer system theoretically provides a way for a national government to implement its own spatial policy at the local level.

A change in the municipal zoning plan is time-consuming due to the long legal procedures. Therefore, a municipality needs flexibility in case pressing circumstances would occur (see Faludi, 1979, p. 125 on the necessity of this anticipatory flexibility). The Spatial Planning Act (Stb. 1962, 286) that was in place between 1962 and July 2008 (new Act: Stb. 2006, 566), says that under certain circumstances building initiatives may be approved, even when they do not conform to the conditions set in the zoning plan (a so-called 'paragraph 19 procedure'; <http://www.wetboek-online.nl/wet/WRO/19.html>).

#### *The effects*

The legislator expects the municipality to share the national discourse on conformity with plans of higher tiers of government. The compliance of actual behaviour is hard to measure because the clauses for its use are rather vague (Van Wijnbergen, 1991), merely indicating the requirement of an 'intention to adapt the zoning plan', without procedural specification of the status of that intention. In addition, whether a case is a pressing local urgency that justifies the use of the law's flexibility, is hardly unambiguous. In nearly all cases, the exemption was not followed by adaptation of zoning. This means that application of paragraph 19 undermines the comprehensiveness of zoning plans and leads back to separate decisions, for which however no substantive guidelines exist (like the ones common in the UK).

### *What the actors did*

Paragraph 19 gave way to the already present strong need for possibilities to deviate from the zoning plan (Struiksmā, 1998). We must not forget that a municipal organisation, although designed to serve the local public interest, is at the same time an egoistic actor that tries to consolidate its autonomy. By nature, it does not obediently walk on the leash of higher tiers. Depending on the wider institutional frame, cities are to some degree concerned with staying in shape financially, especially in a situation of local competition and political fragmentation.

From the beginning there has been criticism on misuse of paragraph 19 allegedly giving way to ad hoc planning. Bröcking and Van Geest provide figures (1982, p.21) on this anticipation practice amounting to 15-20% of all permits throughout the 1970s. They frown upon such practice, arguing that it harms citizens' security of rights (Idem, p. 210). On many occasions, municipalities were accused of using paragraph 19 as a way to bypass the higher tier plans and keep their hands free to ignore policies on land use inconvenient to their case-specific considerations (Vries, 1994, p. 7; Struiksmā, 2008, p. 36; de Koe and Lapperre, 1992). It is for instance mentioned as a reason for building activities within the Green Heart regime.

By applying paragraph 19, building permits could be granted without revising the zoning plan. This way zoning plan revision, that is legally obliged every 10 years but without any punishment for exceeding this time limit, is avoided. Revision not only is expensive, but revisions also are tested by the province for compliance to their plans. What really is anticipation and what is avoidance? Zoning plan exemption allows land use not permitted by the zoning plan, but nonetheless permitted by the city council. It seems to be in the eye of the beholder. For the local population, the consent of the city council ought to secure local interests. For the regional and national government, disobedience might be their perception. Strictly speaking, however, a municipality has first to serve its citizens and not the policy of higher tiers of government (Glasbergen and Simonis, 1979). But even the provinces, formally assessing every case of paragraph 19-anticipation, in practice tend to facilitate it rather than limit (Mastop et al, 1995).

### *Conclusion on 'social working'*

The national law that provided room for anticipation assumed that municipalities would see their role in the national context, namely guiding spatial development in accordance to national and regional plans – a classic example of expecting other the party's frame to be identical to your own. In reality, however, municipalities tend to focus strongly on their own territory and listen to their citizens more than to higher tiers of government. The discourses of columns 1 and 2 (Figure 4-1) appear to diverge. The local considerations with respect to concrete land use issues are too strong, and the local

discourses on what interest is most important to serve are different from the national ones, The social working of the law thus became an escape route for local ambitions that did not fit in regional spatial plans.

Does the new Spatial Planning Act of 2008 redress this aspect? Not really. As Struiksma (2008, p.140) shows, a similar provision was included in the new law, despite the fact that paragraph 19 was heavily criticised. Maybe the critics were from the instrumental discourse? The discourse of anticipation and flexibility seems to have it its way.

This example show that 'the government' is not a concerted system. Ironically, public interests can become selfish too, at least when local governments are put under pressure to stay alive (i.e. financially) and as a consequence develop survival strategies (i.e. exclusionary zoning). This behaviour depends on the rules that apply with respect to where municipal taxes come from and what services they are expected to deliver. Both Daniels (1999) and Dreier *et al* (2004) in particular say administrative fragmentation is one of the biggest problems for proper metropolitan planning. Dreier *et al* (2004) show how the financial fate of municipalities leads to economic segregation across the metropolis and a systemic inclination toward constructing low density suburbs and excluding more compact housing.

## **Discussion**

Law in the modern world has become the paramount agency of social control, at the expense of religion and morals, says Pound in his classic (2002, p. 20). It seeks to regulate human behaviour in order to 'make possible to do the most that can be done for the most people' (Ibid, p. 64) and takes advantage of the human tendency to be obedient. Laws pertaining to land use have an important role in achieving a favourable spatial organisation to a given society. However, the state's rules are not the only rules to obey, and laws are adopted by people in their wider social context. "Effective legal regulation of behaviour that affects spatial organisation of land use involves being able to intervene in ongoing social relationships that are primarily embodied by discourses, and to do so by means of external rules, they must be mobilised by members of the very discursive network" (Griffiths, 2003, p.60).

Devising effective laws cannot ignore the social relationships; the law will become just one of the many considerations for human behaviour. Do note that our sociological perspective does not imply that laws are obsolete – they do create 'restrictive frameworks for discussion and decision-making' (Luhmann, 1966). Legislation does have the power to create a safe environment for trust and stability in social interactions. For example, a proper framework of land registry with clear responsibilities and duties is a fertile environment for transactions and thus for a thriving real estate market.



As we saw in the three cases presented in section 5, different actors enact laws when it is relevant to their particular case. This can be done by decision makers but also by opponent of a particular project. Once the law is enacted, the actors interpret the law and decide how to adopt it into their considerations pertaining their actions and decisions. Each actor interprets and uses the law differently. People struggle about the meaning of a law in general and about the meaning of a law for a specific case. Struggles about space and struggles about the implications of a law are interrelated: when the law demands too much sacrifice, not only the sacrifice but the concept of legal regulation at large becomes disputed. Not rarely such struggles are decided in court.

The three cases illustrate different patterns of law-to-people interaction. The *intention* with which columns in Figure 4-1 apply law can be either facilitating to the subject (providing legal basis for desired opportunities) or modifying (changing behaviour from the original pattern in a different direction). The *effect* of the law can be either distorted (the subject did not properly understand the purpose), compliant (subject did understand and responded according to plan), avoiding (trying to find ways around it) or adverse (impact on subject behaviour works in the opposite way).

For each interface between the columns in our model, intention and effect are defined by the specific case, in particular by the distribution of interests of the players. Despite their shared beliefs (lower box in Figure 4-1), they also have their distinct considerations for their distinct case. The implementation of the Birds and Habitats Directives shows that it takes time for people to understand the law and to interpret and use it in their own decision making. During time they learn to deal with the law and this can either lead to conformance, avoidance or adverse behaviour. The study of the Birds and Habitats Directives shows that the intentions of the legislative body (column 1) become distorted either as a consequence of a lack of information or as a consequence of strategic ignorance and action among the subjects of the law (columns 2 and 3). The pre-emption law was on the one hand facilitating to column 2 by column 1, but modifying to column 3: a law is not *just* the one or the other, but its intention (and consequently the effect it has) can differ between interfaces. The zoning-plan exemption law shows a paradox between rigidity and loss of control: sometimes an intended effect just is not viable for practical reasons.

Distortion is inevitable because laws only sort effect after they are interpreted and applied by people. For Luhmann, the structure of commonly shared values cannot integrate societies of today – they are too complex and no consensus can be achieved. There is no supreme normative framework unifying society. We agree and consider plurality in world views a virtue of western society, although in theory it can grow out of control when tension between systems would build up to undesirable consequences.

We do, however, recommend planners to be more critical toward the regulatory systems that they use to implement plans and that on the other hand constrain their actions. Their professional ability to deliberately distance themselves from the rush of society and politics should be complemented with a critical attitude toward the possibilities of laws in specific, and instruments at large.

Proper research may shed sociological light on the way laws are used and thus contribute to the debate on how to solve societal problems. Sociology of law, although methodologically complex, deserves much more attention than it received so far and has to widen its scope from the narrow direct effects to the full range of impacts. Planners may provide insight in the way laws are employed to tackle problems, the options available to implement legislation and the way diverging perceptions affect their effectiveness. We believe the instrumentalist perspective is not only incorrect, it is also in extreme cases destructive. 'We audit, and we regulate, when we cease to trust' (Moran, 2000, p. 10).

One may argue that the implementation phase we refer to is already the subject of other sciences, and that is correct. All kinds of knowledge highly relevant to planning is present in adjacent fields of research. But do planners take notice of the concepts and theories available outside the planning profession that could potentially be so valuable to them? From our own experience, we observe high walls between fields of research.

In the European societies of today, formal regulations are becoming increasingly complex, whereas at the same time those regulations seem to become ever more influential. But what will the results be, given the pluriform array of nations these regulations address? The question is what theoretical and conceptual knowledge is available to allow proper incorporation of formal regulations in planning research. For planners we suggest to keep with the practice and study the contexts in which laws are used.

## References

- Algemene Rekenkamer 2007. Bescherming van natuurgebieden. Algemene Rekenkamer, 21 juni 2007. retrieved from [www.rekenkamer.nl](http://www.rekenkamer.nl), accessed 23-10-2007 (in Dutch)
- Aubert, V. (1966) Some social functions of legislation. *Acta Sociologica* 10 (1-2): 97-121.
- Baer, X., J.G. March & X. Saetren (1988). Implementation and ambiguity. In March, J.G. (Eds.), *Decisions and Organizations*. Blackwell, Oxford: 150-164.
- Bakker, W. & F. Van Waarden, (1999) *Ruimte rond regels. Stijlen van regulering en beleidsuitvoering vergeleken*. Uitgeverij Boom, Amsterdam.
- Berry, C. (2001) Land use regulation and residential segregation: does zoning matter? *American Law and Economics Review* 3 (2): 251-274.
- Beunen, R. (2006) European nature conservation legislation and spatial planning: for better or for worse? *Journal of Environmental Planning and Management* 49 (4): 605-619.
- Bevir, M. (2004) Governance and Interpretation: What Are the Implications of Postfoundationalism? *Public Administration* 82 (3): 605-625.
- Black, D. (1976) *The behavior of law*. Academic Press, New York.
- Bröcking, B.C. & H.J.A.M. Van Geest (1982) Anticiperen en ruimtelijk beleid: een onderzoek naar het functioneren van de Wet op de Ruimtelijke Ordening op gemeentelijk niveau, met name de anticipatiebepalingen. W.E.J. Tjeenk Willink, Zwolle.
- Buitelaar, E., A. Lagendijk. & W. Jacobs (2007) A theory of institutional change: illustrated by Dutch city-provinces and Dutch land policy. *Environment and Planning A* 39 (4): 891-908.
- Campbell, D.T. & M.J. Russo (1999) *Social experimentation*. Sage, Thousand Oaks.
- Cullingworth, B. & V. Nadin (2002) *Town and Country Planning in the UK*. Routledge, London.
- Daniels, T. (1999) *When city and country collide: managing growth in the metropolitan fringe*. Island Press. Washington.
- De Koe, J. & R.P. Lapperre (1992) In de kantlijn van het bestemmingsplan: een onderzoek naar anticipatie volgens art. 19 WRO en/of art. 50.8 Wv. *Bouwrecht* : 825-837.
- Dimitrakopoulos, D. & J. Richardson (2001) Implementing EU public policy. In: Richardson (Eds.) *European Union: Power and Policy-Making*. Routledge, London.
- Dreier, P., J. Mollenkopf & T. Swanstrom (2004) *Place Matters: metropolitics for the twenty-first century*. Second revised edition. University Press of Kansas, Lawrence.
- Edelman, L.B., & M.C. Suchman (1997) The legal environments of organizations. *Annual Review of Sociology* 23: 479-515.
- Ehrlich, E. (1936) *The fundamental principles of the sociology of law*. Harvard University Press, Cambridge.
- Ellickson, R. C. (1973) Alternatives to zoning: covenants, nuisance rules, and fines as land use controls. *The University of Chicago Law Review* 40 (4): 681-781.
- Faludi, A. (1979) *A decision-centred view of environmental planning*. Pergamon Press, Oxford.
- Faludi, A. (2000). The performance of spatial planning. *Planning Practice & Research* 15 (4): 299-318.

- Fischel, W. A. (1985) *The economics of zoning laws*. The Johns Hopkins University Press, Baltimore.
- Fischer, F. (1990) *Technocracy and the Politics of Expertise*. Sage Publications, Newbury Park.
- Flyvbjerg, B. (1998) *Rationality and Power, Democracy in Practice*. University of Chicago Press, Chicago.
- Fuller, L. (1969) Human interaction and the law. *American Journal of jurisprudence*, 14 (1): 1-36.
- Garth, B. & A. Sarat (Eds.) *How does law matter?* Northwestern University Press, Evanston.
- Glasbergen, P. & J.P.D. Simonis (1979) *Ruimtelijk beleid in de verzorgingsstaat: onderzoek naar en beschouwing over de (on)mogelijkheden van een nationaal ruimtelijk beleid in Nederland*. Uitgeverij Kobra CV, Amsterdam.
- Gregg, B. (1999) Using Legal Laws in an Indeterminate World, Overcoming the Limitations of Jurisprudence. *Political Theory* 27 (3): 357-378.
- Griffiths, J. (1986) What is legal pluralism. *Journal of legal pluralism* 24 (1): 1-55.
- Griffiths, J. (2003) The social working of legal rules. *Journal of legal pluralism* 48 (1): 1-84
- Groetelaers, D.A. (2004) *Instrumentarium locatieontwikkeling. Sturingsmogelijkheden voor gemeenten in een veranderde marktsituatie*. Delft University Press, Delft.
- Gualini, E. (2001) *Planning and the Intelligence of Institutions*. Ashgate, Aldershot.
- Hajer, M.A. & H. Wagenaar (Eds.) (2003) *Deliberative policy analysis: understanding governance in the network society*. Cambridge University Press, Cambridge.
- Healey, P. (1996) *Collaborative Planning: shaping places in fragmented societies*. MacMillan Press Ltd, Houndmills.
- Hix, S. (2005) *The Political System of the European Union*. Palgrave Macmillan, Basingstoke.
- Hommes, S, S.J.M.H. Hulscher, J.P.M. Mulder, H.S. Otter & H. T. A. Bressers (2008) Role of perceptions and knowledge in the impact assessment for the extension of Mainport Rotterdam. *Marine Policy* 33 (1): 146-155.
- Jensen, O.B., & T. Richardson (2004) *Making European Space. Mobility, power and territorial identity*. Routledge, New York.
- Kidder, R.L. (1983) *Connecting law and society: an introduction to research and theory*. Prentice-Hall, New Jersey.
- King, M. & C. Thornhill (2003) *Niklas Luhmann's theory of politics and law*. Palgrave Macmillan, Hampshire.
- Kistenkas, F.H. & W. Kuindersma (2005) *Soorten en gebieden: het groene milieurecht in 2005*. Alterra, Wageningen.
- Korthals Altes, W. & J. de Jong (1998) *Beoordelingskader en achtergronden evaluatie Wet voorkeursrecht gemeenten*. Delft University Press, Delft.
- Luhmann, N. (1966) *Theorie der Verwaltungswissenschaft – Bestandaufnahme und Entwurf*. Grote, Cologne.
- Luhmann, N. (1985) *A sociological theory of law*. Routledge, London.
- Majone, G. & E.S. Quade (Eds.) (1980) *Pitfalls of Analysis*. John Wiley & Sons, Chichester.

- Majone, G. & Wildavsky, A. (1979) Implementation as Evolution. In: J. Pressman & A. Wildavsky. *Implementation*, 3rd ed. University of California Press, Berkeley: 163-180.
- March, J.G. & J. Olsen (1989) *Rediscovering Institutions*. Free Press, New York.
- Mastop, J.M., H.J.M. Goverde, R.W. Verhage & T.H.C. Zwanikken (1995) *Ervaringen met restrictief beleid: doorwerking van het restrictief beleid uit de Vinex op provinciaal niveau*. Ministry of Housing, The Hague.
- Merry, S.E. (1988) Legal Pluralism. *Law & Society Review*, Vol. 22 (5): 869-896.
- Mintzberg, H. (1989) *Mintzberg on management: inside our strange world of organisations*. Free Press, New York.
- Moran, M. (2000) From Command State to Regulatory State? *Public Policy and Administration* 15 (4): 1-13.
- Needham, B. (1982) *Choosing the right policy instruments*. Ashgate, Gower, Aldershot.
- Posner, R. A. (1977) *Economic analysis of law*. Little, Brown and Company, Boston.
- Pound, R. (2002) *Social Control Through Law* (reprint with introduction by A. Javier Trevino). Transaction Publishers, New Brunswick.
- Pressman J. & A. Wildavsky (1973) *Implementation. How Great Expectations in Washington are dashed in Oakland*. University of California Press, Berkeley.
- Priban, J. & D. Nelken (2001) Introduction. In: J. Priban & D. Nelken (Eds.) *Law's new boundaries: the consequences of legal autopoiesis*. Ashgate, Aldershot.
- Richardson, J. (Eds.) (1982) *Policy styles in Western Europe*. Allen & Unwin, London.
- Rossi, P.H., H.E. Freeman & M.W. Lipsey (1999) *Evaluation: a systematic approach*. Sage, Thousand Oaks.
- Sadurski, W. (1999) *Moral pluralism and legal neutrality*. Kluwer Publishers, Dordrecht.
- Salet, W.G.M. (2002) Evolving institutions: an international exploration into planning and law. *Journal of Planning Education and Research* 22 (1): 26-35.
- Segeren, A. (2007) *De grondmarkt voor woningbouwlocaties. Belangen en strategieën van grondeigenaren*. NAI Uitgevers/RPB, Rotterdam.
- Siegan, B. H. (1972) *Land use without zoning*. Lexington Books, Lexington.
- Soeteman, A. (Eds.) (1991) *Coherence and conflicts concerning the law*. Tjeenk Willink, Zwolle.
- Struiksma, J. (1998) Artikel 19 WRO heeft zijn langste tijd gehad. *Bouwrecht* 10: 805-812
- Struiksma, J. (2008) *Het systeem van het ruimtelijk ordeningsrecht*. 4<sup>e</sup> druk. J. Struiksma, Zaandam.
- Terpstra, J., & T. Havinga (2001) Implementation Between Tradition and Management: Structuration and Styles of Implementation. *Law & Policy* 23 (1): 95-116.
- Van Assche, K. & G. Verschraegen (2008) The limits of planning: Niklas Luhmann's systems theory and the analysis of planning and planning ambitions. *Planning Theory* 7 (3): 263-283.
- Van der Zouwen, M. & J.P.M. Van Tatenhove (2002) *Implementatie van Europees natuurbeleid in Nederland*. Planbureaustudies, nr 1. Natuurplanbureau, Wageningen.

- Van Wijnbergen, S.F.L. (1991) Terugblik op de ontstaansgeschiedenis van de WRO. In: P.J.J. Van Buuren (Eds.) 25 jaar WRO. Kluwer. Deventer: 11-14.
- Verkruyten, M., E. Rood-Pijpers, D.J. Hessing & H. Elffers (1994) Rules for breaking formal rules: social representations and everyday rule governed behavior. *Journal of Psychology*, 128: 485-497.
- Verschuuren, J.M. & P.C.E. Van Wijmen (2002) Juridisering van besluitvorming over natuur en landschap als gevolg van EG-richtlijnen. Planbureaustudies 5. Natuurplanbureau, Wageningen.
- Vries, H.J. (1994) De ruimte begrensd: het bestemmingsplan en het spanningsveld tussen beleidsruimte en rechtszekerheid. Kluwer, Deventer.

# Chapter 5

The use of the concept Ecological Networks in nature conservation policies and planning practices



The concept of Ecological Networks is popular in nature conservation policies. This paper reflects on advantages and disadvantages of using this concept in planning and realising ecological ambitions. It focuses on how the concept is variously interpreted and used by different people. A case study on the Ecological Network and its users in the province of Gelderland in the Netherlands shows that concepts can be useful for promoting ideas and uniting people. However, the use of a concept can also lead to misleading consensus and hidden responsibilities, which can frustrate the implementation of the Ecological Networks.

Beunen, R. & J.E. Hagens (2009) The use of the concept Ecological Networks in nature conservation policies and planning practices. *Landscape Research* 34 (5): 563-580.



## Introduction

Ecological Networks has been adopted as an essential concept in the national nature-conservation policies of many European countries (Jongman *et al.*, 2004). Jongman and Pungetti (2004) present a broad overview of the use of the concept of Ecological Networks in Europe and America, both in science and in planning practice. The ambition behind the concept is to form a network that connects existing and future nature areas. Nature areas need to be connected in order to protect biodiversity against increasing human populations, ongoing urbanisation and economic development (Hanski, 1999; Opdam *et al.*, 2003). Human activities, such as the industrialisation of agriculture, the building of infrastructure networks, and urban expansion, have caused serious fragmentation of natural areas (Jongman *et al.*, 2004). Once animal and plant populations become separated into smaller subpopulations in scattered habitats, the risk of extinction of these subpopulations will increase. Migration between different populations is an important factor for the regional persistence of species (Forman and Alexander, 1998; Hanski, 1998). Therefore, the proximity of other nature reserves, together with habitat connectivity, is essential for the survival of certain populations of flora and fauna (Opdam *et al.*, 1985; Opdam *et al.*, 1995; With *et al.* 1996). Ecological networks increase habitat connectivity, for example, by providing 'corridors' and 'stepping stones'. The concept of Ecological Networks is a landscape strategy for the conservation and restoration of interconnected natural areas (Fahrig & Merriam, 1985).

In the Netherlands, the introduction of Ecological Networks in nature management policy heralded the transition from a passive conservation policy to an active development policy (De Jong, 2000; Doevendans *et al.*, 2007). Dutch nature policy is largely based on the ideas laid down in the Nature Policy Plan (Ministry of Agriculture, Nature and Food Quality, 1990), of which the development of the national Ecological Network is a central feature. The national Ecological Network comprises three features: core areas as existing valuable nature, nature development areas as potential valuable nature, and ecological corridors as connections between nature areas (Ministry of Agriculture, Nature and Food Quality, 1990). In the 1990s, the Ministry of Agriculture, Nature and Food Quality mapped out a number of ecological corridors in the Nature Policy Plan. The provincial and municipal authorities and the water boards have subsequently been responsible for the realisation of the ecological corridors. They have included these corridors in their plans and added extra regional and local ecological corridors. These corridors should link different core areas and thus contribute to the national Ecological Network.

Although the concept of Ecological Networks has been used in many policies, the realisation of Ecological Networks often proves to be difficult and time-consuming. There is growing concern among nature conservationists about the lack of implementation of

European nature-conservation policies including the European Ecological Network (WWF, 2006). Regular studies in the Netherlands show that the ongoing realisation of the national Ecological Network is already far behind schedule (Netherlands Environmental Assessment Agency, 2006). The problematic implementation of the Ecological Network concept is not surprising. Implementation literature emphasises how the complicated and political reality in which policy is formulated also affects the implementation process (Barrett, 2004; Schofield, 2001; Pressman & Wildavsky, 1973). The realisation of Ecological Network in the Netherlands, for example, has been hindered by institutional and financial complexities in Dutch land policy (Segeren et al, 2005). Moreover, the European Ecological Network, Natura 2000, is facing increasing criticism from practitioners as well as researchers (e.g. Boitani *et al.*, 2007; Krott et al, 2000; Van den Bosch, 2006).

Implementation research can show why the concept of Ecological Networks, despite its popularity, still faces a lack of implementation and growing criticism. Implementation studies can focus on many different aspects, for example, on power and conflict, location and space, representation, and process and outcome (see e.g. Adger et al., 2003; Barrett, 2004). We are interested in a specific dimension of the implementation process of nature development and management, namely in the use of Ecological Networks, as a concept, and in what happens after the concept has been incorporated in plans and policies. The use of the Ecological Networks concept in nature conservation policies implies a policy that does not describe specific targets nor claim specific areas; the concept provides scope for relevant authorities and other actors to define ecological targets themselves and produce an accompanying detailed spatial design, on a local or regional scale. There are assumptions that the Ecological Networks concept might facilitate multi-actor planning, but this has not yet been studied in detail (Opdam et al, 2006). The aim of this study is to fill this gap. We have studied how various people have given meaning to this concept and how this concept has influenced their multiple actions.

The aim of this paper is to reflect on advantages and disadvantages of using the concept ecological networks in plans and policies. Therefore, we have studied the use of the Ecological Networks concept in planning processes on different levels and by different users. In section 2 we present a theoretical framework relating to how people give meaning to a concept and how this affects their actions and decisions. This framework is used in section 3 and 4 to study the use of the Ecological Networks concept in different planning contexts in the province of Gelderland in the Netherlands. In section 5 we discuss the relevance of the findings of this study for both theory and practice. The paper ends with some general conclusions.

## **Theoretical Framework**

Communication is a crucial aspect of spatial planning that has many dimensions. Policy-making and implementation includes signs and interpretation (Van Assche, 2004), speech and desire (Gunder and Hillier, 2004), and storytelling and argumentation (Throgmorton 2003; Fischer & Forester, 1993, Sandercock, 2003). A concept such as Ecological Networks is a way of presenting and communicating ideas about future landscapes; they can be regarded as signs in planning. If we want to study how the concept Ecological Networks is used in planning practices, we need greater insight into what signs are and how meaning is given to them.

Moreover, the way in which meaning is given to concepts can be partly explained by focussing on the specific and dynamic context in which concepts are used. Jensen and Richardson (2004), for example, focus on visions for European physical space, emphasising the context and influence of politics and power on the construction and the embedding of these visions in policy practices. They give a critical reflection on the way in which concepts, text and images are used to promote the hegemony of infrastructure over other forms of space at the level of the European Union. Healey (2004, 2006) also reflects on the significance of geographical imaginations in strategic spatial planning, thereby stressing the relevance of understanding the institutional context in which concepts are used. In other words, 'contextualised stories' of concepts can be helpful in understanding the meaning of a concept in practice; they '... give insight into how messy problems involving values, judgment, multiple interpretations, planners' particular identities, and personal and group agendas have unfolded in particular context' (Watson, 2002, p. 185).

In order to include the relevance of communication and context in studying the implementation of the concept of Ecological Networks, we specifically study the users of concepts within 'contextualised stories'. We use semiotics (the study of signs) to understand what signs are and how they are interpreted by users in planning practices.

The classic roots of semiotics offer two different approaches to signs (Chandler, 2002; Van Assche, 2004). The Swiss linguist De Saussure defines a sign as a combination of a signifier and a signified (1966). The signifier is the form that the sign takes and the signified is the idea that it represents. The signifier and the signified exist only in combination. One signifier can stand for many signifieds, and one signified may be referred to by many signifiers. There is no necessary or inevitable relationship between them. This does not mean that all meanings are 'allowed'. Social conventions or codes constrain meanings (Chandler, 2002). As such, some combinations of form and idea are experienced as inconsequent or unlikely signs (cf. Eco, 1992, 1994).

Whereas the Saussurean approach of signs focuses on the structure of signs, the American philosopher Peirce offers a somewhat different approach. Peirce's approach

emphasises the *process of sense-making*, semiosis. As such, he includes the relevance of the 'user' of a sign. In his approach he has distinguished the representamen, the interpretant, and the object. The *representamen* is similar to Saussure's signifier (form) and the *interpretant* partly follows Saussure's signified (idea). In addition, the *object* can be described as the actuality (matter) to which the sign refers. Moreover, it is only within the process of interpretation that signs are given meaning. Therefore, "[t]he meaning of a sign is not contained within the sign, but is arises in its interpretation" (Chandler, 2002, p. 35). Peirce states that signs can take all manner of forms, but they are only a sign if they are interpreted as a sign. Signs have no intrinsic meaning on their own. Similarly, one could define the value of a concept in spatial planning in relation to its users: a concept is only performing in its planning context if it is used by someone. As such, any interpreted representation of reality contributes to the construction of a new reality (cf. Barnes & Duncan, 1992).

Furthermore, the process of sense-making links to the notion that the ideas of the 'author' of a concept cannot be literally contained in subsequent texts. The original 'text' acquires meaning *only* if it is read. However, there is no guarantee that 'readers' will give the same meaning to the text as the writer has done. 'The birth of the reader must be at the cost of the death of the Author' (Barthes, 1977). When studying the meanings that are given to concepts, one should therefore focus on the interpreter, the reader, the meaning-maker, and not simply on the 'author'.

Whereas the aforementioned semiotic approaches are especially concerned with the production of meaning by signs and language, others have focused on the production of meaning by discourse. Foucault (1970), for example, emphasises cultural understanding and shared meaning. In contrast to previously discussed approaches, Foucault's work is historically grounded; Foucault has studied relations of power and tactics rather than relations of structures and meaning (Hall, 1997). Foucault's notions about discourse and power are very relevant for (social) studies on planning and policy-making (see, for example, the work of Hajer, Jensen and Richardson and Van Assche). Discourse in planning studies can be defined as 'frames of collectively conscious and subconscious elements present in a certain culture at a certain time' (Van Assche, 2004, p. 54). We can define concepts in policy as 'discursive constructions' (after Hajer, 2006): narratives or metaphors in which analysis 'is especially powerful when done in the context of the study of the social-historical conditions in which the statements were produced and received' (Hajer, 2006).

Interpretations and actions are inextricably linked (Howarth & Stavrakakis, 2000; Barnes & Duncan, 1992). Interpretation of signs takes place in discursive practices. Discourses affect interpretation and interpretation affects discourses. It is a person that interprets a concept, not a discourse itself. People can never be reduced to a single

discourse; they are part of different discourses while at the same time reconstructing them (Van Assche, 2004). Barnes and Duncan (1992) have studied discourses, texts and metaphors in the representation of landscapes. They state that meaning is never fixed and texts are not simple mirrors of the world. 'Reading' a 'text' is both culturally and historically dependent and individually and momentarily variable (*ibid.*, p. 5; cf. Radford, 2002). With this latter statement in mind, we study the use of the Ecological Networks concept, taking in the power of shared contexts and the meaning of individual differences and preferences.

### **Research approach**

In order to reflect on the advantages and disadvantages of the Ecological Networks concept in the planning and implementation of nature policy, we have studied the multiple use of the Ecological Networks concept in the province of Gelderland in the Netherlands. The concept has been an important part of the Dutch national nature-conservation policy since 1990. Provinces have the responsibility to elaborate and realise the Ecological Network at provincial level. An Ecological Network includes core areas, nature development areas and corridors; corridors are crucial to connect core areas and nature development areas. Implementation of the corridors is complicated since, in contrast to the other areas, the corridors are part of land which is owned and used by a wide range of actors who are not directly concerned with nature conservation. Therefore, the implementation of ecological corridors requires the involvement of many different actors. For many of these actors, the ecological corridors are their first encounter with the concept of Ecological Networks.

The province of Gelderland is situated in the centre of the Netherlands and has relatively large nature areas. The Veluwe is the largest nature area (1,000 km<sup>2</sup>), it includes large forest and heath land area, and is a popular tourism site. The provincial plan includes the aim to realise 35 ecological corridors (Provincie Gelderland, 1997). The provincial authority launched the Green Connection project in 1997 in order to accelerate the realisation of ecological corridors in Gelderland (Provincie Gelderland, 1997). The ecological corridors will consist of linear elements such as hedges or streams, and stepping stones such as ponds. The water boards, regional government bodies that deal with water management, are responsible for realising the ecological corridors near streams; other ecological corridors are to be realised by municipalities or by other (private) organisations.

This study draws on a combination of interviews and literature research. Forty semi-structured interviews were conducted with a wide range of actors (Table 5-1 gives an overview). Those interviewed were employees of the province of Gelderland, municipalities, water boards, nature conservation organisations, agricultural NGOs,

recreation boards, and individual landowners. The interviewees were asked questions about their ideas on Ecological Networks, their knowledge of Dutch nature-conservation policy, and their opinion on ecological corridors. They were also questioned about the interests and objectives of the organisations that they work for. In addition to this case study, a literature study was carried out on the use of the concept of Ecological Networks in different practices. This literature study was not limited to the province of Gelderland, but also considered the use of Ecological Networks in other provinces and on a national, European and scientific level (Provincie Groningen, 1999; Beentjes & Koopman, 2000; Provincie Drenthe, 2000; Glasbergen et al., 2001; Ministry of Agriculture, Nature and Food Quality, 1990, 2000; Van der Molen & Dautzenberg, 2003; Beunen, 2006). The interviews and the literature study together provide a thorough insight into the different uses of the Ecological Networks concept.

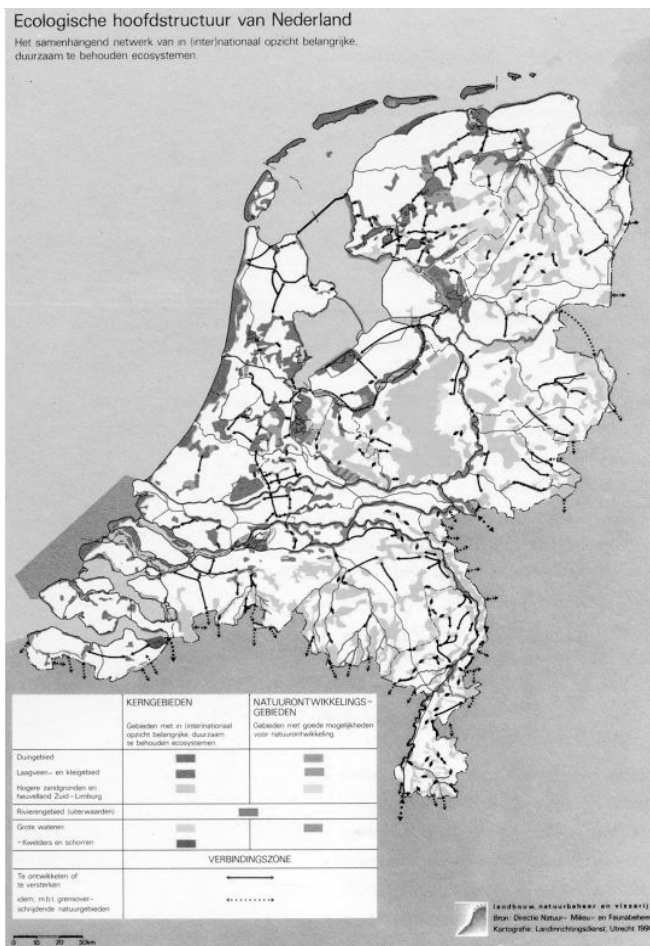
Semiotics offers us a mode of interpretative analysis (cf. Yanow, 1993; Coenen et al., 1988), which focuses on the meanings of a sign in a specific context. Meaning is not contained in a sign but arises only in the active process of interpretation (Chandler, 2002). The role of the user is important because he is the reader, the interpreter and the creator of meaning. The different users of the Ecological Networks concept and the different interpretations are the main focus of this study. The semiotic approach is specifically interesting in the case of the implementation of corridors since diverse actors with diverse ambitions are involved. Following our semio-discursive theoretical framework, we create an interpretive research approach (cf. Yanow, 1993; Coenen et al., 1988). In our results, we specify and identify (1) the different users of the concept, i.e. the 'readers' of the concept; (2) how these different users interpret the concept, i.e. 'sense-making'; (3) how the users represent the concepts, i.e. the 'texts' or 'signs' (4) the contexts in which they interpret the concepts, i.e. the 'discursive practice'; (5) the effects on their actions and decision, and (6) the spatial effects. These six issues enable us to reflect, in a critical and original way, on the use of the Ecological Networks concept during the implementation process.

## **Results**

### ***The users of the concept***

The concept of Ecological Networks has reached many different people and is widely used and interpreted. Most respondents are aware of the national and provincial policy documents and the concept of Ecological Networks; they are very positive about the concept and support the idea that nature areas need to be linked. The interviews and literature review show that most local and regional authorities and water boards in Gelderland have included ecological corridors in their plans. Moreover, in addition to the

35 corridors that the province of Gelderland has listed in its strategic plan, municipalities and water boards have even added new corridors. They argue that these extra corridors have a local importance. Other public and private actors were also involved in realising some specific ecological corridors. Some landowners are mainly interested in collaboration, for example in creating hedgerows or ponds; they appreciate the elements of an ecological corridor as part of a scenic landscape. Others are interested in Ecological Networks mainly for financial reasons, such as possibilities for subsidies for nature management on their property as an additional source of income. Ecological corridors are mentioned in several discussions about local projects, in which people linked the corridors with aims of their projects. In addition, some small-scale research was conducted in order to gain more knowledge on the realisation of specific corridors.



**Figure 5-1.** Ecological Networks in the Netherlands (Ministry of Agriculture, Nature and Food Quality, 1990).

### ***The ways in which people interpret the concept***

During the interviews, people were asked to describe the appearance of an ecological corridor. Most respondents gave a description that roughly resembled the ideas presented in different national policy documents. Most respondents mentioned, for example, linear elements and stepping stones. A more detailed view of their responses, however, shows that the number and the size of the elements in the ecological corridor varied among the respondents. The respondents greatly differed in their opinions on the spatial claim of ecological corridors. While some argued that corridors were large structures, for example a 100-metre wide corridor and stepping stones of several hectares, others saw the corridors as small landscape structures with a width of only a few metres. The latter respondents mentioned small ponds or bushes as stepping stones. Respondents also had different opinions about the type of connectivity of corridors: they referred either to physically connected elements or separated landscape elements that form a corridor if they enable the migration of species. The interviewees also made different links with ideas of nature. For some, ecological corridors were associated with specific species, while others consider them as a way of improving general nature values or creating a more appealing landscape.

These results show that different actors mostly have shared ideas about the concept on an abstract level. However, at the same time, actors differ in their detailed ideas about Ecological Networks.

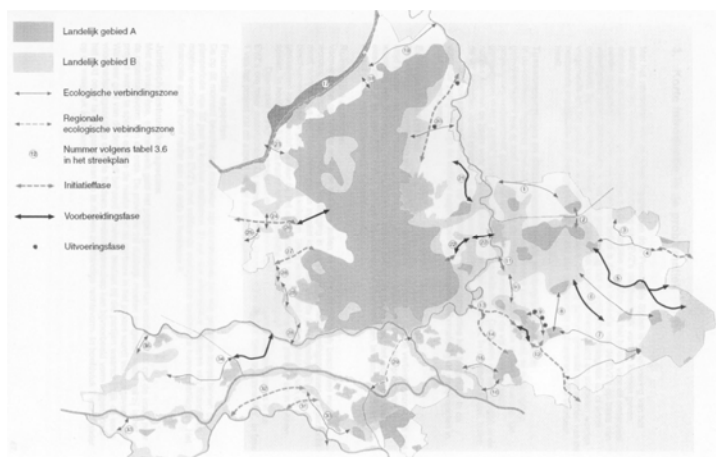
### ***The representations of the concept***

Many texts and visualisations were studied that have been used to represent Ecological Networks. The 'main' representation is the description in national policies, accompanied by images of a map of the Netherlands showing the different nature areas as green spots and the links between them as green lines (Figure 5-1) (Ministry of Agriculture, Nature and Food Quality, 1990). The province of Gelderland also has similar descriptions and images in its regional spatial plan, including a map of the province on which the 35 corridors are shown (Figure 5-2) (Provincie Gelderland, 1996). These corridors are represented by arrows pointing to the various nature areas to be connected. An additional report shows drawings of landscapes with ecological corridors from a bird's-eye perspective (Provincie Gelderland, 1997). Such drawings were made for different target species (e.g. the Sedge Warbler (*Acrocephalus schoenobaenus*), Badger (*Meles meles*) (Figure 5-3), Great Crested Newt (*Triturus cristatus*) and Ide (*Leuciscus Idus*). The text of this report gives detailed information about spatial requirements and possible bottlenecks, and about other species that require a similar corridor. At a later stage in the implementation process, the province presented a new report in which ecologists gave more details about the spatial requirements of the different corridors (Rijnen & Koolstra,



1998). The interviews showed that only a few people knew of these detailed reports, including the specific representations of the Ecological Network. Instead, most people only knew about the map from the regional spatial plan. People who did see the landscape drawings considered them to be a confirmation of their own ideas about ecological corridors; they emphasised various issues such as connecting areas, limited spatial claim, a growing model, or improving the aesthetic qualities of the landscape. One farmer interpreted the landscape sketches as an actual map and accordingly asked which specific area was represented on the drawings.

Other organisations represented ecological corridors in different ways, varying from written text to different types of map. Several materials have thus been developed that have advanced the strategic concept of the Ecological Network.



**Figure 5-2.** Ecological Networks in the province of Gelderland (Provincie Gelderland, 1996)



**Figure 5-3.** Example of an ecological corridor for the Badger (*Meles Meles*) (Provincie Gelderland, 1997)

### ***The contexts in which the concept is interpreted***

The case material shows a clear relation between the interpretation of the concept and the interests and responsibility of people and organisations. Farmers, for example, explained that the corridors can be formed by a number of small elements that are sited between agricultural lands. However, at the same time they emphasised that the amount of available land is limited and that ecological corridors should therefore have a small claim on the land. Water boards clearly stated that they were responsible only for a small strip of land near streams. They consider ecological corridors as nothing more than a natural stream bank. Employees of the province whose task is to coordinate projects with farmers and other local landowners were well aware of provincial ideas about ecological corridors. However, they also emphasised the importance of local concerns. They argued that realisation should begin on a small scale and develop slowly. From this perspective, these people advocated a broad scope, aiming at landscape in general and not focusing excessively on specific target species. They also related the spatial claims of ecological corridors to the 'competition' from other spatial claims: larger claims by ecological corridors mean fewer opportunities for creating other land uses in a specific area. While the provincial civil servants tried to link the concept with local multiple land-use practices, others looked at possibilities for combining the concept specifically with real-estate projects. They hoped that this combination could generate revenue, which is necessary for realising the ecological corridors. Within this latter context, ecological corridors were seen as green space, like parks around buildings. Other people disagreed with these ideas about 'red for green', being housing in order to finance nature. They did not consider these green areas as part of ecological corridors and they opposed the idea of using nature conservation to allow the construction of new buildings.

Among landowners and land users, mainly farmers, 'nature' often has negative associations. These farmers consider Ecological Networks as purely nature-related and link it to a whole range of nature-conservation and environmental-protection legislation. They are afraid that this legislation will result in future restrictions for their business. As long as ecological corridors are presented as landscape or landscape elements, these landowners do not experience any threat, but if ecological corridors are represented as nature, these elements are likely to face a great deal of opposition. This was shown by the range of negative responses when a provincial politician stated that all elements of an Ecological Network should receive protection in future by designating them as nature areas. This single statement has turned support for ecological corridors into considerable opposition. This event has made it clear that the ideas of the province, or more specifically of this politician, did not correspond to the farmers' views. Before this event, the differences between the ideas and responsibilities of the farmers and those of the province had been concealed by a lack of knowledge.

In short, the background of the users of Ecological Networks, such as the ambitions of the organisations they work for and their role in previous events, has influenced how these people interpret, judge, and use the concept.

### ***The effects on actions and decisions***

Most interviewees fully agree that the realisation of ecological corridors is important and demonstrate considerable involvement. However, most people subsequently present ideas about ecological corridors that distance them from the need to take on the responsibility of policy implementation and actual realisation. Nature conservation organisations that manage nature areas, for example, emphasised the importance of ecological relations between different nature areas, but they also clearly stated that it is not their responsibility to create and manage corridors between different areas. Water boards also clearly emphasised that they are responsible only for a small part of Ecological Networks, i.e. stream banks. Likewise, the province stated that its only task is to facilitate realisation. Municipalities argued that it is not their job to manage nature areas, no matter what size these areas are. The cooperation of private land owners is required because most of the ecological corridors are planned over their land. Although most of them support the idea of landscape improvement, their fear that cooperation might have negative effects on their business makes them reluctant. Hence, the commitment to actually creating ecological networks is limited in comparison to the ambitious ideas about how they can be used to preserve biodiversity.

Another interesting aspect of the case study has been the ongoing criticism from ecologists during the implementation process. They mainly criticise the way in which the different actors have translated the concept into spatial claims. According to the ecologists, these claims were either too small, in the wrong location, or even both. They have also criticised the realisation process for focusing too strongly on wide-ranging landscape values and too little on specific target species. Therefore, in their view, much work has been carried out to no purpose. Ecologists have supported their argument about what is, in their view, the correct interpretation of ecological network by using specialist terminology: ecological framework, sustainable protection of nature in the Netherlands, protected species and spatial coherence of the network. The reason why some other people interpret ecological corridors along the lines of general landscape or nature values is a practical one: a broader perspective of ecological corridors corresponds to the wide-ranging challenges of local practices, and therefore can better facilitate the realisation of Ecological networks.

An ecological research project carried out for the province, for example, showed that the 35 ecological corridors designated by the province only offer a minor solution for the habitat fragmentation problems in Gelderland (Rijnen & Koolstra, 1998). Ecological

bottlenecks are mainly found within the core areas while the ecological corridors are planned between these areas and for some species corridors are not an effective solution (ibid.) Together with this ecological research, the ecologists presented new models about what ecological corridors should look like, including detailed information for each species about the size of landscape elements and the required distances between them. They hope that this knowledge will help other actors to obtain a better idea of what constitutes an ecological corridor.

What we notice here, again, is a clash between interpretations in an ecological discourse and the interpretations of other people with a different discourse. People with different interpretations of the concept of ecological networks begin to argue about what is the 'correct' or 'best' interpretation.

### ***The spatial effects***

Ecological corridors have been realised on a small scale only. Water boards, for example, have redesigned the banks of their watercourses in a more ecological way by making the slopes steep and planting near the streams. Elsewhere, hedgerows have been planted as part of a future ecological corridor. Most interviewees admitted that, although the concept of Ecological Networks has been included in plans and policies, almost none of the projects have been realised.

Furthermore, regular evaluations of Dutch nature-conservation policy continue to show that a large part of the Ecological Network in the Netherlands has not yet been realised, and that it is therefore not possible to speak of a coherent network (Netherlands Environmental Assessment Agency, 2002, 2006).

Hence, although the concept of Ecological Networks has influenced how people talk about policies, projects and space – and although they regularly use terms such as ecological corridors, connecting areas and stepping stone – the concept has had only very few spatial effects until now.

### **Discussion**

The study shows that the concept of Ecological Networks has become popular: it has been included in many policy documents, it has reached many 'readers', and it has been given a great deal of attention and appreciation in discussions. Nevertheless, spatial ambitions concerning nature conservation, which were initially attached to the concept in policy, have scarcely been implemented and realised in the actual landscape. This discrepancy can be characterised as a situation in which time, energy and money are invested in consultation, research and reports, without achieving the intended spatial affects of the policy-makers who initially included the spatial concept in their policies (cf. Boitani *et al.*, 2007).

Despite the restrictive spatial outcome of the concept in our case, the communicative effect of the use of the concept is helpful in implementing Ecological Networks. Most people refer to the objectives of Ecological Networks along the lines of a single broad objective: to improve nature qualities. Most people agree with this open ambition, provided they do not have to take specific action themselves and provided nature does not conflict with their own interests. Here, we observe what an open concept enables: Ecological Networks are represented in a broad way so that most people can interpret the concept in their own way and link the concept to their own interests. This openness explains why the concept of Ecological Networks has spread easily to several institutions and is used by a wide range of actors. In addition, spatial concepts that can be interpreted in many different ways are more likely to be used by people who believe that they can use the concept to gain more public or political support or to obtain financial or other resources (cf. Jensen and Richardson, 2004).

Studies of planning concepts show that different functions can be attributed to concepts in planning and policy-making (Zonneveld, 1991; Zonneveld & Verwest, 2005; Van Duinen, 2004). Zonneveld, for example, identifies cognitive, intentional, institutional, communicative and action functions of spatial concepts (Zonneveld, 1991). Concepts are useful tools for persuading policy-makers to notice certain things, politicians to understand something in a particular way, and citizens to re-conceptualise their relationships with the space around them (Jensen & Richardson, 2004). A concept never has a single function, but is always a combination of different roles.

The openness of a concept is used constructively in the field of advertising to promote products or ideas. Marketers and advertisers have discovered that the personal and social domains of the consumer, rather than the characteristics of goods, are the vital core of merchandising (Leiss et al., 2005). Open concepts are likely to reach more people and be referred to more often than concepts that are too 'closed', provided that the concept has already acquired a positive image. Likewise, in order to improve the implementation of Ecological Networks, central policy-makers and implementers should focus more on the drives, expectations and interpretations of landowners and local and regional governments, rather than on 'perfecting' the concept itself. In addition, the scientific improvement of the Ecological Network concept should also be concerned with the ambitions and restrictions in practice. The concept of Ecological Networks could be used primarily to make people aware of the importance of specific nature values and to convince them of the importance of preserving these values.

While it is to some extent very clear what nature conservationists want when they speak about these Ecological Networks, and the concept gives an indication of what Ecological Networks can look like, the concept does not neither directly specifies how much land is required nor claims specific pieces of land. Without these spatial details, almost no-one

initially regards Ecological Networks as conflicting with his own interests. In this way, the concept is very safe. However, for how long will the concept retain a positive image? Policy-makers and nature conservationists should consider the long-term implications of conceptualisation.

Our study shows that the existence of an appealing concept does not automatically imply that there is agreement about the more detailed underlying ambitions. An open concept can connect different people, but a dominating, broad discourse can mask different realities and naturalise different ideas (cf. Jensen & Richardson, 2004; Van Eeten, 1999). We observed many signifiers that are used to express ideas about Ecological Networks. Different texts and illustrations are produced in scientific discourse and at the national, provincial and local level. Interviews and publications have shown that the concept of ecological corridors is simultaneously and successively represented in many different ways. Our study shows that beliefs and values that sustain the dominant meaning of a spatial concept are often promoted, while differences are ignored or even denigrated. This situation preserves the myth that a concept has a single comprehensive original, intrinsic or univocal meaning. A concept, however, is intrinsically multivalent since it is a user who defines the meaning; the user is driven by specific ambitions and translates a concept on the basis of his specific responsibilities. This mechanism has a number of consequences in theory and practice. Differences in meaning are inevitable, and are not something that researchers, policy-makers and implementers should seek to eliminate or control.

Theories of multiple meanings and their consequences are not new, but planning and decision-making practices show that this is very difficult for planners and policy makers to deal with. Rather than accepting the variety of meanings and focussing on different ambitions, planners and policy-makers often try to convince other people of the correct meaning of a concept and thus eliminate other meanings. Instead of discussing possible solutions that do justice to differences in ambitions and spatial objectives, the different actors often persist in re-emphasising their interpretation of the spatial concept. Based on our theoretical framework, we suggest that the makers and sympathisers of a concept should empathise more closely with the different 'readers' of the concept in order to understand their ambitions and restrictions, rather than repeating 'original' intentions and blaming users for 'wrong' interpretations.

Users give different meanings to the concept in different discourses, and they compete in terms of which interpretations are 'correct' and which are not (Eco, 1992). However, taking into account the reality of multiple interpretations from the outset, we argue that it is pointless – and, some might argue, impossible (Rorty, 1992) – to determine the original meaning of a concept. People who promote or use a concept in planning practice should take this into account. They can use a concept to promote their

own ideas but they should realise that using a concept can conceal differences and variety in the ambitions of different people involved in the planning process. Debates about these differences can provide a clearer picture of an actual situation at the right time in the planning process. They can also temper unrealistic expectations and prevent hasty and weak consensus. Likewise, in research, we should not focus on what a concept *should* mean collectively, but on what a concept *does* mean in practice; this type of research is useful because it can clarify different and contrary ambitions. Only when different ambitions are taken into account is it possible to study the implementation of a specific spatial concept. Researchers should study how ambitions, ideas, and meanings change when a spatial concepts is introduced. "This means understanding the relation between discourse and the ways in which they are institutionalised: how policy ideas get formed and reproduced." (Jensen & Richardson, 2004 p. 243; cf. Fischer, 2003; Flyvbjerg, 1998; Healey, 2004).

## **Conclusions**

The use of the Ecological Networks concept as a means in the implementation of nature conservation policies has advantages as well as disadvantages. Also similar policy cases, which include the implementation of a central concept that requires the commitment of various organisations, can learn from this semio-discursive approach. The Ecological Networks concept is widely used in many plans and policies and many people know about it. Despite this popularity, Ecological Networks are still seldom realised in practice. The success and failure have the same cause: the ambiguity of the concept. People can interpret the concept in such way that it meets their own ideas and ambitions. It is therefore easy to use the concept in plans and policies, which explains its success. On the other hand, this ambiguity is a reason for the fact that very little is realised. People who employ a vague concept do not have to show their real ambition and responsibility, which might be very different from the ambition of other people who use the same concept. The use of the concept thus conceals potential conflicts.

The study in Gelderland shows that the use of the Ecological Networks concept is helpful in activating people to consider nature and landscape development. However, the broad use also hides the contradictory ambitions, beliefs or interests of people involved in the implementation process. There is a real danger that Ecological Networks will not be realised in practice at all, or that the networks that are realised do not meet the objectives of nature conservation policy. This calls for a more critical approach to the deceptive popularity of the concept and the fact that many people use it in policies and plans without specifying their ambitions and responsibilities.

## References

- Adger, W.N., Brown, K., Fairbrass, J., Jorden, A., Paavola, J., Rosendo, S. & Seyfang, G. (2003). Governance for sustainability: towards a 'thick' analysis of environmental decision-making. *Environment and Planning A*. 35: 1095-1110.
- Barnes, T. J. & Duncan, J. S. (1992) *Writing worlds: discourse, text and metaphor in the representation of landscape*. Routledge, London.
- Barrett, S.M. (2004) Implementation studies: time for a revival? Personal reflections on 20 years of implementation studies. *Public Administration* 82 (2), pp. 249 – 262.
- Barthes, R. (1977) The Death of the Author. In: *Image-music-text*, 155-164. S. Heath (trans.). Hill and Wang New York
- Beentjes, R.A. & Koopman, J.C.M. (eds.) (2000). *Kloppende Aders. Een impuls aan de realisatie van Ecologische Verbindingszones in Nederland. Rapportage van de Landelijke Projectgroep Ecologische Verbindingszones..* Ministry of Agriculture, Nature and Food Quality, The Hague.
- Beunen, R. (2006). European Nature conservation legislation & spatial planning: for better or for worse? *Journal of Environmental Planning and Management*. 49 (4) p. 607-621.
- Boitani, L., Falcucci, A. Maiorano, L. & Rondinini, C. 2007. Ecological Networks as Conceptual Framework or Operational Tools in Conservation. *Conservation Biology* 21 (6): 1414-1422.
- Chandler, D. (2002) *Semiotics, the basics*. Routledge, London.
- Coenen, H., Pennartz, P. & Wester, F. (1988) *Nasporingen: structuren van interpretatief sociaalwetenschappelijk onderzoek*, Amsterdam, SISWO.
- Doevendans, K. Lörzing, H. & Schram, A. (2007) From Modernist Landscapes to New Nature: Planning of Rural Utopias in The Netherlands. *Landscape Research* 32 (3): 333-354.
- De Jong, D., 2000. Nature Conservation Policy: Transboundary Arrangements. In: J. Tatenhove, B. Arts, and P. Leroy (eds.), *Political Modernisation and the Environment. The Renewal of Environmental Policy Arrangements*. Kluwer Academic Publishers, Dordrecht, 97-115.
- De Saussure, F. (1966). *Course in general linguistics*. (trans. W. Baskin) McGraw-Hill, New York.
- Eco, U. (1992) *Interpretation and Overinterpretation*. Cambridge University Press, Cambridge.
- Eco, U. (1994) *The limits of interpretation*, Indiana University Press, Indiana.
- Fahrig, L., Merriam, G. (1985) Habitat patch connectivity and population survival. *Ecology* 66, 1762-1768.
- Fischer, F. (2003) *Reframing Public Policy. Discursive Politics and Deliberative Practices*. Oxford University Press, Oxford.
- Fischer, F. & J. Forester (Eds.) (1993) *The Argumentative Turn in Policy Analysis and Planning* Duke/ University Press UCL Press, London.
- Flyvbjerg, B. (1998) *Rationality and Power, Democracy in Practise*. University of Chicago Press, Chicago.
- Forman, R.T.T. and L.E. Alexander (1998). Roads and their major ecological effects. *Annual Review of Ecology and Systematics* 29: 207-231.



- Foucault, M. (1970) *The Order of Things. An Archaeology of the Human Sciences*. Random House, New York.
- Glasbergen, P., Van de Water, E. & Wassen, M. (2001). Een zwakke schakel in het natuurbeleid. Het realiseren van ecologische verbindingzones. *Landschap* (18): 99-108.
- Gunder, M. & Hillier, J. (2004) Conforming to the expectations of the profession: a Lacanian perspective on planning practice, norms and values. *Planning Theory & Practice*, 5 (2): 217-235.
- Hajer, M. A. (2006) Doing discourse analysis: coalitions, practices, meanings. In T. Metze & M. Van den Brink (Eds.) *Words matter in policy and planning. Discourse theory & method in the social sciences*. Nethur, Utrecht: 65-75.
- Hall, S. (1997) *Representation: cultural representations and signifying practices*. Sage Publications, London.
- Hanski, I. (1998). Metapopulation dynamics. *Nature* 396:41-49.
- Hanski, I. (1999) Habitat connectivity, habitat continuity, and metapopulations in dynamic landscapes. *Oikos* 87: 209-219.
- Healey, P. (2004) The treatment of space and place in the new strategic spatial planning in Europe. *International Journal of Urban and Regional Research*, 28, 45-67.
- Healey, P. (2006) Relational complexity and the imaginative power of strategic spatial planning1. *European Planning Studies*, 14 (2): 525-546.
- Howarth, D. & Stavrakakis, Y (2000) Introducing discourse theory and political analysis, p. 1-23, in: Howarth, D., Norval, A, and Stavrakakis, Y (eds) *Discourse Theory and Political analysis*. Manchester University Press.
- Jensen, O.B., & Richardson, J. (2004) *Making European Space. Mobility, Power and Territorial Identity*. Routledge London.
- Jongman, R.H.G. & Pungetti, G. (eds.) (2004) *Ecological Networks and Greenways. Concept, Design, Implementation*. Cambridge University Press, Cambridge.
- Jongman, R.H.G, Külvik, M. & Kristiansen, I. (2004) European ecological networks and greenways. *Landscape and Urban Planning* 68: 305-319.
- Krott, M., Julien, B., Lammertz, M., Barbier, J.-M., Jen, S., Ballestreros, M., & De Bovis, C. (2000) VOicing Interests and ConcErns: NATURA 2000: An ecological network in conflict with people. *Forest Policy and Economics*, 1: 357-366
- Leiss, W., Kline, S., Sut, J. & Botterill, J. (2005) *Social communication in advertising. Consumption in the mediated marketplace*. Routledge, New York.
- Ministry of Agriculture, Nature and Food Quality (1990) *Nature Policy Plan*. Ministry of Agriculture, Nature and Food Quality, The Hague.
- Ministry of Agriculture, Nature and Food Quality (2000) *Natuur voor Mensen, Mensen voor Natuur. Nota natuur, bos en landschap in de 21e eeuw*. Ministry of Agriculture, Nature and Food Quality, The Hague.
- Netherlands Environmental Assessment Agency (2002) *Natuurbalans 2002*. Kluwer, Alphen aan de Rijn.
- Netherlands Environmental Assessment Agency (2006) *Natuurbalans 2006*. MNP, Bilthoven.

- Opdam, P., Foppen, R., Reijnen, R., Schotman, A., 1995. The landscape ecological approach in bird conservation: integrating the metapopulation concept into spatial planning. *Ibis* 137: 139-146.
- Opdam, P., Rijdsdijk, G., Hustings, F., 1985. Bird communities in small woods in agricultural landscapes: effects of area and isolation. *Biological Conservation* 34, 333-352.
- Opdam, P. Verboom, J. & Pouwels, R. (2003) Landscape cohesion: an index for the conservation potential of landscapes for biodiversity. *Landscape Ecology* 18 (2): 113-126
- Opdam, P., Steingröver, E. & Van Rooij, S. (2006). Ecological networks: A spatial concept for multi-actor planning of sustainable landscapes. *Landscape and Urban Planning* 75: 322-332.
- Pressman J. & Wildavsky, A. (1973) *Implementation. How Great Expectations in Washington are Dashed in Oakland*. University of California Press, Berkeley.
- Provincie Drenthe (2000) *Realisatie ecologische verbindingzones*. De Drentse Strategie. Provincie Drenthe, Assen.
- Provincie Gelderland (1997) *Groene Connecties. Achtergrond over ecologie, economie en bestuur*. Provincie Gelderland, Arnhem.
- Provincie Gelderland (1996) *Streekplan Gelderland 1996*. Provincie Gelderland, Arnhem.
- Provincie Groningen (1999) *Nota ecologische verbindingzones in de provincie Groningen*. Provincie Groningen, Groningen.
- Radford, G.P. (2002) Beware of the Fallout. Umberto Eco and the Making of the Model Reader. 93<sup>rd</sup> Annual Conference of the Eastern Communication Association, April 24-28 2002, New York.
- Rijnen, R. & Koolstra, B. (1998) *Evaluatie van de ecologische verbindingzones in de provincie Gelderland*. IBN-DLO, Wageningen.
- Rorty, R., 1992. The pragmatist's progress. In: Eco, U., 1992. *Interpretation and Overinterpretation*. Cambridge University Press, Cambridge: 109-132.
- Sandercock, L. (2003) Out of the Closet: The Importance of Stories and Storytelling in Planning Practice. *Planning Theory & Practice*, 4 (1): 11-28.
- Segeren, A., Needham, B. & Groen, J. (2005) *markt doorgrond: een institutionele analyse van grondmarkten in Nederland, Rotterdam [etc.], NAI [etc.]*.
- Schofield, J. (2001) Time for a revival? Public policy implementation: a review of the literature and an agenda for future research. *International Journal of Management Reviews* 3 (3), pp. 245-263.
- Throgmorton, J. A. (2003) Planning as Persuasive Storytelling in a Global-Scale Web of Relationships. *Planning Theory*, 2, 125-151.
- Van Assche, K.A.M. (2004) *Signs in Time. An interpretive account of urban planning and design, the people and their histories*. Wageningen University, Wageningen.
- Van den Bosch, F., 2006. *Draagvlak voor het Natura 2000 gebiedenbeleid. Onder relevante betrokkenen op regionaal niveau*. Working document 55. Statutory Research Tasks Unit for Nature & the Environment, Wageningen.
- Van der Molen, P. & Dautzenberg A. (eds.) (2003) *Groene schakels : ecologische verbindingzones : voorbeeldenboek*. Provincie Noord-Brabant, 's-Hertogenbosch

- Van Duinen, L. B. J. (2004) Planning Imagery - The emergence and development of new planning concepts in Dutch national spatial policy. PrintPartners, Ipskamp.
- Van Eeten, M. (1999) Dialogues of the deaf: defining new agendas for environmental deadlocks. Delft, Eburon.
- Watson, V. (2002) Do we learn from planning practice? The contribution of the practice movement to planning theory. *Journal of Planning Education and Research*, 22, 178-187.
- With, K.A., Gardner, R.H. and Turner, M.G., 1996. Landscape connectivity and population distributions in heterogeneous environments. *Oikos* 78, pp. 151–169.
- WWF (2006) Natura 2000 in Europe. An NGO assessment. Implementation status of the Habitats Directive in the EU-25 Member States, Bulgaria, Romania, Croatia and Turkey. WWF, Budapest.
- Yanow, D. (1993) The Communication Of Policy Meanings - Implementation As Interpretation And Text. *Policy Sciences*, 26, 41-61.
- Zonneveld, W. (1991) Conceptvorming in de ruimtelijke planning, Amsterdam, Planologisch en Demografisch Instituut.
- Zonneveld, W. & Verwest, F. (2005) Tussen droom en retoriek: de conceptualisering van ruimte in de Nederlandse planning, The Hague, Netherlands Institute for Spatial Research.

**Table 5-1.** Interviewed persons and the organisation they are working for

R. Dumont	Province of Gelderland – projectleader Green Connections
F. Hildebrand	Province of Gelderland - department municipality plans
S. Douma	Province of Gelderland - department municipality plans
M. van Esch	Province of Gelderland - landscape plans
E. ten Berge	Province of Gelderland - project IRIS (riverbasin plans)
C. Meerkers	Province of Gelderland - department infrastructure
M. Bons	Province of Gelderland – Projects Gelderse Vallei
H. van Zandbrink	Province of Gelderland - Projects Achterhoek
P. Seesing	Province of Gelderland – Projects Achterhoek
G. Schut	Province of Gelderland - new estates, nature compensation
S. van Haaren	Province of Gelderland - finance
A. Eijgenraam	Province of Gelderland - European funds
J. Gorter	Natuur Monumenten
I. Barten & V. van Uem	Waterboard Rijn en IJssel
G. Butz, S. Fris & A. Nijmeijer	Municipality of Ede
A. Stortelder	IBN/DLO (research institute)
J. Adams & M. v.d. Berg	Milieucoöperatie de Kraats
P. Kleingeld	Municipality of Wisch
J. ten Have	Recreation Board Achterhoek and Liemers
P. van Haaften	Dienst Landelijk Gebied - project Ecological Corridors
K. Buddingh	Dienst Landelijk Gebied - land purchase
F. Bragonje	Dienst Landelijk Gebied - land purchase
J. Verweij	Stichting Vernieuwing Geldersche Vallei
R. van Loenen Martinet	Gelderse Milieufederatie
J. Roemaat	Milieucoöperatie Didam
H. Hubers	Waterboard Vallei and Eem
B. Markink	Municipality of Hummelo en Keppel
B. Bos & J. Maalderink	Municipality of Gendringen
E. Lam	Municipality of Doesburg
H. Scholma	Rijkswaterstaat
P. den Dulk	Municipality of Doetinchem
G. Beltman	Recreation Board Veluwe
J. van Nuenen	Arcadis Deventer (consultant company)
E. Klein-Lebbink	Staatsbosbeheer
C. v.d. Geneugten	Geldersch Landschap
H. Gehling & R. Schulte	Kreis Borken (German regional government)
M. Bebbber	Nederlandse Vereniging Van Sportvisserfederaties
J. Huidink	Stichting Landschapsbeheer Gelderland
J. van Laar	Stichting behoud Natuur en Landelijk Gebied
J. Bisschops	Landschap Overijssel

# Chapter 6

## Planning and management of Natura 2000 sites; experiences from the Netherlands



Management plans have the potential to become important instruments for the sustainable management of Natura 2000 sites. An analysis of experiences with the formulation of management plans for Natura 2000 sites in the Netherlands shows that many stakeholders are involved in the planning and decision-making processes about Natura 2000 sites and that the uncertainties about the consequences of designation as a Natura 2000 site and the fear for future restrictions are important reasons for tensions and conflicts. We argue that more attention should be given to all stakeholder interests in designing collaborative planning processes. The aim of these processes is not only to formulate a management plan, but also to create awareness, mutual understanding and trust among the various stakeholders.

## **Introduction**

Biodiversity conservation in the European is regulated by the Birds and Habitats Directives. Member States need to transpose these directives into their own legislation and they need to designate protected sites that together will form the Natura 2000 network. The implementation of the Birds and Habitats Directives has been problematic in many European Union Member States (e.g. Beunen, 2006; Laffan, 2004; Scholl & Chilla, 2005; Fairbrass, 2000). Member States failed to adequately transpose the Birds and Habitats Directives into national legislation or to submit complete lists of Natura 2000 sites (e.g. WWF, 2001; WWF, 2006). The EU took legal action against many Member States to enforce formal implementation (Baker, 2003; CEC, 2006; CEC, 1998). Currently, most Member States have largely finished the formal implementation of the Birds and Habitats Directives (WWF, 2006). Most Member States have transposed the requirements of the Birds and Habitats Directives into their national nature conservation laws and most of them have presented the list of the Natura 2000 sites. The next phase of the implementation process is to establish the management of Natura 2000 sites and to take all necessary measures to ensure the conservation of species and habitats.

During the implementation process, it became clear that the EU biodiversity policy had a potential impact on existing and potential land use, and this made many landowners and other actors uncertain about the consequences of the directives for their own activities. People in many Member States opposed the technical and top-down approach used during the designation of Natura 2000 sites as well as the dominance of scientific criteria. They were also concerned about the legal consequences for planning and decision-making processes (Hiedanpää, 2002; Alphandéry & Fortier, 2001; Pinton, 2001). Opposition came mainly from local authorities, land owners and from the agricultural, business and tourism sectors (e.g. Laffan, 2004; Hiedanpää, 2002; Stoll-Kleeman, 2001; Coffey & Richartz, 2003). The main reason for this opposition was uncertainty and fear regarding the consequences for social and economic activities in and near Natura 2000 sites (Beunen & Van Ark, 2007; Van den Bosch, 2007; Bouwma et al, 2008). In many areas existing nature conservation designations were extended and new designations were introduced. These designations were seen as likely to conflict with the rights and interests of existing users of a given area (Gibbs et al., 2007).

In the Netherlands, the problematic implementation of both directives caused a great deal of discussion about nature conservation legislation and about possible options for avoiding conflict situations in and near designated areas. In 2005, the Dutch government presented the formulation of management plans for Natura 2000 sites as a solution to these problems. After a brief political discussion, the obligation to formulate management plans for all areas that had been designated as Natura 2000 sites was included in the new nature conservation law. These management plans were intended to

provide clarity about the nature conservation objectives, the necessary management actions and the consequences of designation as a Natura 2000 site for other forms of land use. The experiences from the Netherlands with the implementation of these management plans are interesting for the many people that are involved in the planning and management of Natura 2000 sites. In other countries as well, management plans are regarded as an important tool for the sustainable conservation of Natura 2000 sites. Denmark, France and Greece have made the development of management plans mandatory. Member States such as Austria, Belgium, Finland and the United Kingdom also use management plans, but without a basis in law. The role of management plans differs between the Member States. In some countries the management plans are only used to describe the nature conservation objectives and to formulate the necessary measures, while in other countries the plans are used as a framework for a more integrated management approach to site management or as a guide for stakeholder involvement (Backes et al., 2006).

The aim of this paper is to reflect on the experiences with Natura 2000 from the Netherlands. We discuss what has become problematic in the preparation of management plans for Natura 2000 sites in the Netherlands and draw some lessons that are useful for authorities and site managers who are responsible for the planning and management of Natura 2000 sites and other protected sites.

### **Proactive and reactive management**

Following the Birds and Habitats Directives relevant authorities or managers of the site need to make sure that the conservation objectives can be attained. For many sites this requires an active management approach. First and foremost, this implies taking the necessary management actions to ensure the optimal circumstances for species and their habitats. However, management also requires making decisions about social and economic activities that take place in and near Natura 2000 sites (cf. Beunen & Van Ark, 2007). The designation of Natura 2000 sites does not exclude these other activities. On the contrary: 'there is not any a priori prohibition of new activities or developments within Nature 2000 sites; these need to be judged on a case by case basis' (CEC, 2003; p. 3). Not only activities within the boundaries of the designated area are subject to such an assessment. All activities, including activities outside the area that are likely to have significant effects on conservation objectives, also have to be assessed. Many activities, for instance the development of infrastructure, agricultural activities or recreation, could affect protected areas and species. Management is not only about ecology, but also about dealing with these different activities, and thus dealing with the different people that are involved in these activities. From this perspective we can distinguish between a proactive and a reactive role that management plans can play. These plans can describe



the conservation objectives and the measures which, in accordance with the Habitats Directive, are necessary for achieving them (proactive role) and these plans might facilitate decision-making processes with regard to the different activities in and around Natura 2000 sites (reactive role). The proactive role is only slightly different from the role many management plans have at the present time. The main difference is a stricter focus on the conservation objectives that result from designation as a Natura 2000 site. This contrasts with current objectives, which might focus on other habitats and species or be more generalised, such as the protection of a specific landscape. In this context the management plan works as a guideline for site managers and is most likely a literal plan that describes the necessary management measures.

In this paper we focus on the reactive role of management plans: these plans should provide clarity about the consequences for other activities, facilitate decision making and help prevent conflict situations. This is the role the Dutch government had in mind when it made the formulation of management plans mandatory (Ministry of Agriculture, Nature and Food Quality, 2006).

### **Theoretical framework**

Studies towards the implementation of Natura 2000 show that responsible authorities and site management depend on other actors to achieve the conservation objectives, to balance the varying interests and to agree to the management schemes (Ostermann, 1998; Keough & Blahna, 2006; Hiedanpää, 2002; Pinton, 2001). This means that the authorities need to discuss, negotiate and cooperate with a variety of other actors. This necessity to cooperate is also shown in a growing body of knowledge on governance that address the fact that authorities often have limited steering capacities (Pierre & Peters, 2000; Hajer & Zonneveld, 2000; Rhodes, 1997). In a situation where responsible authorities or site managers depend on other actors in order to reach certain goals, steering through networks seems to offer the best possibilities (Goverde & Tatenhove, 2000). In this perspective planning and decision making should be seen as negotiation processes, conducted not only between governments and other parties, but increasingly between the various tiers of the government (De Roo, 1999; Hajer & Wagenaar, 2003; Hajer, 2003a).

The development of management plans for Natura 2000 sites could therefore be seen as an opportunity to start a collaborative planning process. There are various reasons for involving stakeholders in the planning process. There is a growing body of literature that shows that such a process offers the possibility of not only creating more awareness and understanding for conservation objectives, but also creating mutual trust among the actors involved in the process (Van Ark, 2005; Hajer, 2003b; Palerm, 2006; Healey, 1997). Involving stakeholders in the formulations of plans can help to generate knowledge and

provide the needed resources and support from a wide range of involved people. Experiences from various other planning processes show that the support for a plan will increase if different actors determine actions and decisions together (Goodwin, 1998; Jones & Burgess, 2005; Rydin & Pennington, 2000). Paavola (2004) argued that management plans and procedures will significantly influence the way in which competing interests in the use of protected areas are balanced and the degree to which their management will be legitimate and effective. He emphasised the importance of the participation of stakeholders and of recognising and listening to them. Similarly, Rydin and Pennington (2000) argued that stakeholders must be encouraged to build and develop institutions rather than have institutions imposed on them from above. Local people affected by nature conservation initiatives should also be involved in planning and management in order to increase the fairness of decisions and to promote local ownership and cooperation (Jones & Burgess, 2005). Stakeholder involvement offers the possibility of increasing the legitimacy of management plans, and thus indirectly, the legitimacy of the so-often criticised Natura 2000 policy itself (Hajer & Zonneveld, 2000).

## **Method**

The formulation of management plans for Natura 2000 sites can be characterised as a planning process in which many actors are involved. The most important objective of this planning process is to provide clarity about the consequences of Natura 2000 designation and to deal with the uncertainties that come with this designation. The main question we want to answer is: 'how have the planning processes, which resulted in the management plans, influenced people's expectations and their awareness of Natura 2000?' We studied the planning context in which the management plans for Natura 2000 sites are supposed to play a role and paid particular attention to the various actors involved, their roles within the process, the issues at stake and the perspectives of the various actors on these issues and on the planning process.

Our reflection on the planning and management of Natura 2000 sites in the Netherlands draws on a number of research and consultancy projects that we conducted during previous years. Additional interviews, participation in meetings about Natura 2000 and an extensive literature review have been used to enrich our experiences and to gain further insights into the discussion about Natura 2000 sites. A total of 32 semi-structured interviews were held with regional authorities, consultants, site managers, NGOs, entrepreneurs and farmers. The interviewees were asked questions about their perspective on the discussions surrounding Natura 2000, their expectations about the consequences of Natura 2000 sites for social and economic activities, and their views concerning the management plans and the planning process by which these plans were formulated. A wide range of research reports, articles in newspapers and professional

journals, policy documents and newsletters from the Ministry of Agriculture, Nature and Food Quality were studied to gain a deeper understanding of the most important discussions and the perspectives of various actors in these discussions. We also took part in four meetings, a formal hearing and three consultation rounds, during which the planning process of the management plans was explained and people could ask questions and address their concerns. The combination of consultancy projects, interviews, literature review and public hearings gave us a thorough understanding of the discussions about Natura 2000 sites and the role management plans play within these discussions.

### **The implementation of Natura 2000 in the Netherlands**

The implementation of the Birds and Habitats Directives in the Netherlands faced three interrelated problems: (1) it took a long time and a great deal of discussion before the directives were correctly transposed into national laws, (2) the designation of Natura 2000 sites also took a long time and faced growing opposition, and (3) planning and decision making in these areas was frustrated by European nature conservation laws (Beunen, 2006). Similar problems were found in many other Member States (cf. Alphandéry & Fortier, 2001; Hiedanpää, 2002; Ledoux et al., 2000; Stoll-Kleemann, 2001; Krott et al., 2000).

The Netherlands, along with several other Member States, believed that its own laws and policies would require little or no adjustment to meet the requirements of the Birds and Habitats Directives (cf. Fairbrass & Jordan, 2007; Chilla, 2005). The Dutch government was therefore reluctant to transpose the Birds and Habitats Directives into legislation and change nature conservation laws. In the end, the transposition process was a lengthy one that resulted in legal uncertainty and required a great deal of discussion.

The designation of Natura 2000 sites also took a long time. The selection of sites was based on scientific criteria which were included in the Birds and Habitats Directives. It was therefore no surprise that in most Member States the selection of Natura 2000 sites was done by experts connected to the national authorities. Landowners and other stakeholders were simply informed and could only object if they thought the scientific criteria were not applied correctly. In the Netherlands, the designation of sites under the Habitats Directive included public hearings, and a meeting was planned for each province. During these meetings, Natura 2000 was explained and people could ask questions about the designation of Natura 2000 sites. These meetings ended with a hearing during which people could formally voice their opinions on the designation of specific Natura 2000 sites. The public hearings, the discussions which took place in newspapers and the interviews with various stakeholders showed that Natura 2000 designations faced criticism from two sides. Nature conservation organisations protested

because the government had failed to designate sufficient areas, while landowners, local authorities, and representatives of the agricultural and tourism sectors argued that the designated areas were too large (Ministry of Agriculture, Nature and Food Quality, 2007). There was also doubt about some of the objectives for Natura 2000 sites. It was argued that in some cases the Natura 2000 objectives conflicted with current nature conservation objectives and there was a question of whether or not the Natura 2000 objectives could be achieved at a specific site (*ibid.*).

Many of the designated areas in the Netherlands are owned by nature conservation organisations. This might be one of the reasons why there was not as much opposition from landowners to designation as in some other Member States (e.g. Hiedanpää, 2002). The most important criticism came from the agricultural and tourism sectors, since both feared that Natura 2000 would mean restrictions for their own activities in and near the Natura 2000 sites.

The impact of the Birds and Habitats Directives on all kinds of activities became clear during formal implementation of both directives. Several planning and decision-making processes were frustrated due to these European nature conservation laws. A study of these conflict situations revealed that the problems were caused not so much by the legislation itself as by governmental failure in implementing the directives and a failure of the related communication and knowledge exchange (Beunen, 2006). In many cases the courts annulled decrees because the requirements of the Habitats Directive had not been taken into sufficient consideration due to a lack of attention, knowledge or awareness. Reasons for such annulments included arguments that there was insufficient proof that a project would have significant effects, that no research had been conducted into the effects or that the lack of reasonable alternatives had not been convincingly demonstrated. The lawsuits were given a great deal of attention in the press and this attention strengthened the popular belief that many activities and projects would be frustrated by the European directives. Lawsuits also played a role in the implementation of Natura 2000 policies in other Member States (De Santo & Jones, 2007; Morris & Gibson, 2007), although the interpretation and application of the Habitats Directive varied between Member States (Backes et al., 2006).

Many actors, such as project developers, farmers, entrepreneurs from the leisure and tourism sectors as well as local authorities, were uncertain about the implications of Natura 2000 for their own activities. Many were frustrated about the top-down approach and the lack of public consultation. Their uncertainty and fear about the implications of Natura 2000 increased people's frustration and resulted in growing opposition to Natura 2000 and other nature conservation policies. This growing opposition puts enormous pressure on the management of Natura 2000 sites. In response to the growing criticism,

the Dutch national government decided to obligate the formulation of management plans for all Natura 2000 sites.

### **Management plans for Natura 2000 in the Netherlands**

The obligation to formulate management plans for all Natura 2000 sites was included in the Dutch Nature Conservation Act of 2005. The management plans were to be finished three years after the formal designation of a Natura 2000 site. The plans were supposed to provide clarity about (1) the conservation objectives, (2) the measures that were necessary to reach those objectives and (3) what the consequences would be for other activities in and near a Natura 2000 site. A management plan was to be formally approved by a province or a ministry after consultation with landowners, land users and other relevant stakeholders (Ministry of Agriculture, Nature and Food Quality, 2006).

The national authorities expected the management plans to provide clarity for landowners and land users and to solve conflicts in planning and decision making regarding activities and projects in and near Natura 2000 sites. This was clearly demonstrated during the public hearings on designated sites. During these hearings, many people asked for information regarding the consequences for their own activities as a result of the designation of Natura 2000 sites. These questions remained unanswered during the hearings, with people from the Ministry only stating that answers would be given when the management plans were formulated (Ministry of Agriculture, Nature and Food Quality, 2007). The management plans were supposed to provide clarity about the consequences for other activities in and around Natura 2000 sites (Ministry of Agriculture, Nature and Food Quality, 2006).

The EU did not provide a very detailed description of what should be included in the management plans. EU advice about these plans focused mainly on the conservation objectives and the necessary measures, with attention to stakeholder consultation (CEC, 2000). The suggestion to formulate management plans is included in the Habitats Directive. Article 6 of this directive describes management plans as one of the possible forms which measures can take. Management plans may not always be necessary and if Member States choose to use these plans, it is likely that they can establish a framework that includes other measures. In this respect, management plans are mainly a means for establishing the necessary conservation measures and making provisions for avoiding habitat deterioration and significant species disturbance. The European guideline on Article 6 of the Habitats Directive (CEC, 2000) makes it clear that management plans should address all foreseen activities and unforeseen new activities as referred to in Article 6(3) and (4) of the Habitats Directive (CEC, 2000 p. 19).

There is a noticeable difference between Dutch management plans and the EU recommendations concerning these plans. In the Dutch context, the management plans

are meant to provide clarity about the consequences of the designation of the site for other activities in and near the site, whereas the EU guideline is limited to conservation management and does not include decision making about other activities or future developments. The issue of incorporating various concerns, interests and types of knowledge into the planning and management of Natura 2000 sites is thus an important issue; it is one which national authorities need to deal with, even though they lack specific guidance from the EU. The Dutch government considered the management plans to be an important means of providing clarity about the consequences of designation as a Natura 2000 site for social and economic activities. A case study of the actors involved in the Natura 2000 site De Wieden (a marsh area in the Netherlands), showed that in 2004 these expectations were shared by governmental organisations, nature conservation organisations, local entrepreneurs and farmers (Veerbeek, 2004).

### **Organisation of the planning processes**

The Netherlands has designated 162 Natura 2000 sites. Depending on where the site is located, the formulation of the management plan is the responsibility of the provincial authorities, the Ministry of Agriculture, Nature and Food Quality, the Ministry of Defence or the Ministry of Transport, Public Works and Water Management. The conservation laws require these authorities to formulate the management plans after consultation with land owners, land users and other stakeholders. Relevant authorities, like municipalities and Water Boards, also need to be consulted. For most sites, a project team was put together to formulate the management plan. This project team was supervised by a steering committee of politicians from the government organisations involved and sometimes by site managers. In addition to the project teams, an advisory board was formed in which interest groups could participate. In many cases, external consultants were hired to draw up the plans or to manage the planning process.

The analysis of the ways in which the planning processes were organised showed that in most cases the emphasis was on the formal requirements of the planning document and that the ecological content of the plan was therefore the guiding principle. The planning processes were conducted by mainly ecological experts focussing on a detailed analysis of the ecological situation and on surveying existing land-use activities and their possible effects on conservation objectives. The cooperation with stakeholders was thoroughly organised only in a few cases, where the focus was on the involvement of various stakeholders and the main issues to be dealt with were, 'who should be involved and in what way'. Examples are the collaborative planning processes at the Voordelta (including the fishing industry, the tourist sector, ngo's and local governments), IJsselmeer (Regiobureau Natura 2000, 2009) and the formulation of a corporate guideline

by the ministry of Transportation in how to deal with external parties in the process of drawing up management plans.

For the majority of the sites, the management plan was formulated by a small group of experts, with a specific focus on the ecological and technical aspects. Consultation meetings with interest groups and public information sessions were used to collect information about the land-use activities in and near Natura 2000 sites. The possibilities for landowners and land users to participate in the planning processes were limited. In most cases, they only had the possibility of talking about their ideas and knowledge during the formal information meeting. In practice, however, these people mainly used these meetings to voice their criticism about Natura 2000 and about the course of the planning process. Interest groups had more possibilities for participating in the planning process, as they were invited to the advisory boards and to specific workshops, during which the various issues were discussed.

In some cases, the plan-making process led to major discussions between experts from various authorities about the quality of specific knowledge or data. These people also faced numerous uncertainties regarding the complex relationships between land-use activities and conservation objectives, as well as concerns about whether the plan would meet the criteria of the Birds and Habitats Directives. Due to these uncertainties and this lack of information, the formulation of the management plans took much more time, and was more costly, than planned. Only a few management plans were formulated within the allotted time, and for many sites there are only draft versions of the management plans that still have to go through the formal hearing procedures.

In the meantime, criticism of Natura 2000 did not decrease. Several special interest groups, such as the LTO (farmers union) and the VNO-NCW (Confederation of Netherlands Industry and Employers) repeatedly voiced their criticism in newspaper articles and in letters to the responsible Ministers (Table 6-1). Many people and organisations felt excluded from the planning processes and the discussions. They repeatedly expressed their concerns about the consequences of site designation for social and economic activities, and they continued to be uncertain about what Natura 2000 implied for their own activities. Their trust in the planning process and in the expected outcomes decreased because it took longer than expected to draw up the management plans, participation possibilities were limited and ecological aspects guided the content of the plans.

### **Roles and perspectives of the stakeholders**

The project leaders who were responsible for the formulation of the management plans considered ammonia emission and water management to be the most difficult issues to deal with in the planning process. Several of them also mentioned that the decision-

making context had become complicated due to the emphasis on formal procedures. Many decision makers were therefore reluctant to approve new plans and projects because it was not always clear how to deal with the possible effects of these plans and projects in the decision-making process. It was especially the decision making on agricultural activities that faced delays. This was because there was a lot of discussion about the possible effects of agricultural development on ammonia emissions and the effects of ammonia on ecosystems and protected species (Trojan, 2007; Van Bommel et al., 2007). The national government tried to develop generic instruments and procedures to deal with this issue, but this approach repeatedly failed because various stakeholders could not agree on these instruments, and because the European Habitats Directive required site-specific assessment, as was also shown by a court decision on a proposed generic framework for the assessment of ammonia and Natura 2000 .

The discussions and conflicts about the consequences of Natura 2000 and instruments to deal with these consequences negatively influenced the relationships between governments and other stakeholders. As a result, the communication and negotiation processes have become even more complicated. A study on the support among various stakeholders for Natura 2000 sites showed that the concerns of the project leaders were shared by other stakeholders, such as site managers, municipalities and interests groups (Van den Bosch, 2007). Many people were uncertain about the consequences for social and economic activities and they feared possible restrictions. This fear was also expressed in various newspaper articles and during the meetings about Natura 2000 (Table 6-1). People complained that the authorities did not provide enough information about Natura 2000 and did not provide clarity about the consequences of site designation. They argued that too much emphasis was being put on the conservation objectives. In contrast to these criticisms, some project leaders, in cooperation with various conservationists, worried about whether the responsible authorities and national authorities were making enough effort to protect designated sites.

Many of the issues that were discussed relating to the management of Natura 2000 sites were not new and had already caused discussions and even conflicts during planning processes and projects prior to the implementation of Natura 2000. For example, the discussion about nitrification of protected sites and the necessity of restricting ammonia emissions from farms around these sites started in the 1980s (e.g. Termeer, 1993; Lekkerkerk, 1998). In the meantime, agricultural zoning had been implemented. This zoning called for less intensive agricultural use or even the removal of farms in the vicinity of protected sites, buffer zones around protected sites and more generic policies to reduce emissions. All these measures led to a lot of discussion between stakeholders (see Table 6-1).



The major difference lay in the fact that the implementation of the Birds and Habitats Directives forced authorities to make decisions about these issues. This meant that tensions between conservation objectives and social and economic activities needed to be addressed and could no longer be ignored. Many people felt that the planning processes that were initiated with the aim of formulating the management plans ignored or even overruled the planning processes that were already taking place to deal with potential conflicts between site protection and social and economic activities around these sites. They were afraid that the agreements that were made during previous planning processes would become subject to debate again, and they feared that despite earlier promises, new restrictions would follow. These fears were especially present among stakeholders who had been informed about the management plans but were not allowed to participate in the planning process (individual landowners, entrepreneurs and farmers). The feelings of uncertainty and fear remained strong, despite the fact that governmental bodies repeatedly stated that the negative consequences for social and economic activities would be limited and that the management plans would provide more clarity. Negative publicity seemed to dominate the news as various interest groups repeatedly expressed their criticism in the newspapers (Table 6-1). This did not help to create further awareness about Natura 2000.

### **Lessons from the Netherlands**

This study shows that in their quest for certainty, the authorities caused a great deal of uncertainty among the various stakeholders who were involved in the discussions and decision-making processes about Natura 2000 sites. The Dutch national government had obligated the formulation of management plans as a means of providing clarity about the consequences of designation as a Natura 2000 site for landowners and land users in and near these sites. This quest for certainty was in conflict with the uncertainties that characterise the management of Natura 2000 sites. The influence of various uncertainties in nature conservation and environmental impact assessment has been discussed by many researchers (cf. Geneletti et al., 2003; Halpern et al., 2006; Regan et al., 2002; Arentsen et al., 1999). The managers of Natura 2000 sites, for example, have to deal with uncertainties concerning changes in species populations and habitats in the future. There are many known and unknown factors that influence populations and ecosystems, and it is impossible to make a detailed prediction of future dynamics. Long-term predications or predications on a large scale, for example, include a great many uncertainties (e.g. Burgman et al., 2005; Regan et al., 2005). Besides these issues, there are uncertainties about the perspectives of various stakeholders and their ideas about Natura 2000 and the planning process. It is also unknown which social and economic activities people would like to develop in the future.

This study shows that the uncertainties that accompany the designation of Natura 2000 sites primarily influence the planning processes and the discussions about the relationships between biodiversity conservation and social and economic activities. Most stakeholders found it difficult to deal with these uncertainties. Instead of the needed cooperation and acceptance of the measurements for Natura 2000, stakeholders developed a defensive attitude.

In planning practice, the need for flexibility often clashes with the demands for firmness and security, or legal security (Thomas et al., 1983; Faludi, 1984, 2000; Van der Valk, 1989). In more horizontal forms of decision making, this conflict is even worse than in more traditional hierarchical planning approaches, because the complexity of decision-making processes increases sharply as more actors become involved (Scharpf, 1997; Klijn & Teisman, 1997; De Roo, 1999). Management plans should address uncertainties, but at the same time these plans should provide the necessary flexibility in the planning process to deal with the various uncertainties. Our analysis of the formulation of management plans in the Netherlands shows that this proved to be very difficult. Most planning processes had a strong focus on the ecological content of the plans and paid only limited attention to the needed collaborative planning process and the involvement of other interests.

The way in which the planning process was organised had a major influence on the expectations and perspectives of the various stakeholders. Organisations that decided to focus on the substantial aspects and put a lot of effort into drawing up plans created even more uncertainties, discussions and tensions among and between stakeholders. Not only were stakeholders uncertain about the consequences of Natura 2000, but also about the planning process and their possibilities to participate and influence the outcomes. Due to these uncertainties, many stakeholders were very sceptical about the management plans. The most positive results were found in the projects where the authorities invested time and effort in the organisation of the participation of various stakeholders, in communication and in finding shared-knowledge. These projects showed that intensive communication between the various stakeholders provides a useful basis for conflict solving. The decision to formulate new management plans for all Natura 2000 sites overruled a wide range of existing planning and decision-making processes and caused much uncertainty among the various stakeholders. Many people feared that previous arrangements would be cancelled due to Natura 2000.

An important conclusion is that the management of many Natura 2000 sites is not a matter of making management plans and implementing measures, but a task that requires the responsible authorities to invest in communication and relationships with land owners, land users, local governments, interests groups, NGOs and citizens. The project teams that formulate the management plans should therefore include people

who can analyse the ecological relationships and possible effects of social and economic activities. However, these teams should also include people who can organise and manage the collaborative planning process. During the planning process, tensions about Natura 2000 should be addressed and the responsible authorities should communicate with various stakeholders and try to achieve mutual understanding of each others' perspectives and interests. Communication between the various stakeholders is required to establish the mutual trust upon which all partnerships should be based (Harrison, et al., 1998; Van Ark, 2005). Trust is an important coordination mechanism in coping with complexity and uncertainty and is an important precondition for the initiation and continuation of cooperation in complex networks (Van Ark, 2005). If these aspects are not addressed in the formulation of management plans, it is likely that these plans will only strengthen the criticism of the technical and top-down approach of Natura 2000 policies and the distrust in the authorities and conservation agencies that implement these policies. Building trust between actors may require a great deal of time (Berkes, 2002), but as Keough and Blahma (2005) have shown, 'the long-term benefits of integrative, collaborative ecosystem management outweigh the short-term difficulties associated with such efforts'. At the same time it should be acknowledged that communication with stakeholders does not immediately solve all the conflicts, but it does create more awareness for the conservation objectives and offers possibilities to seek possible solutions.

## **Conclusion**

Many Member States are engaged in finishing the formal implementation of the Birds and Habitats Directives. They have designated the Natura 2000 sites and transposed the requirements of both directives into national legislation. The most important challenge for the future is to organise the management of the Natura 2000 sites and to ensure that nature conservation objectives will be realised. The experiences from various Member States show that the top-down oriented implementation of the Birds and Habitats Directives and the uncertainty about the consequences of these directives for social and economic activities in and around Natura 2000 sites has led to growing opposition.

In this paper we reflected on the formulation of management plans for Natura 2000 sites in the Netherlands. We elaborated on the current problems and discussions in the Netherlands. This shows that many stakeholders are involved in the planning and decision-making processes about Natura 2000 sites and that the uncertainties about the consequences of designation as a Natura 2000 site and the fear for future restrictions are important reasons for tensions and conflicts.

We have showed that in many cases, management of Natura 2000 sites is not simply a technical or ecological task, but a process that requires the active involvement of many

different stakeholders. Relevant authorities largely depend on these stakeholders in order to achieve the conservation objectives. Together with landowners, interest groups and experts, they have to determine how a protected area can be used in such way that nature conservation objectives can be met.

During the planning process, the actors involved need to deal with uncertainties about the future of the ecosystem and about the consequences of nature protection for other activities. A management plan in which the future situation is worked out in detail with a focus on the ecological content only, does not work in such a context. It would require a great deal of time and money to formulate such a plan, and it would raise merely conflict and discussion between the various actors and lead to misunderstanding in public. We argue, therefore, that more attention should be given to all stakeholder interests in designing collaborative planning processes. The aim of these processes is not only to formulate a management plan, but also to create awareness, mutual understanding and trust among the various stakeholders. The processes in which people together agree about how the conservation objectives can be linked with other social and economical activities can help to create more support for the protection of the Natura 2000 sites and for conservation policies in general. These are important aspects that can help to prevent future conflicts, since in the long term, this awareness this cooperation, based on mutual interests and trust might prove to be more valuable for nature conservation than the management plan itself.

**Table 6-1.** Overview of articles in newspaper, public statements and letters to the Ministry

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- NRC (2000) Bedreigde dieren schrik van bestuurders. March, 29, 2000.
- Wegener Dagbladen (2003) Natuurregels staan economie in de weg. July, 23, 2003.
- Recron, LTO Nederland, MKB Nederland, Kamer van Koophandel, HISWA, Productschap vis (2006). Natura 2000: naar Balans tussen Ecologisch beleid en Economische vitaliteit. Economische kanttekeningen bij de invulling van Natura 2000. Letter to De Kamercommissie voor Landbouw, Natuur en Voedselkwaliteit. June, 19 2006
- Cobouw (2006) Metaalunie: Vogel en Habitatrichtlijn remt Nederlandse economische groei. November 11, 2006.
- Telegraaf (2006) Watersporters vrezen gevolgen Europese natuurbeleid. June, 13 2006.
- Cobouw (2007) Bouw te vaak gekweld door flora en fauna. September, 28, 2007.
- Gelderders Dagblad (2008) Waarschuwing gevolgen nieuwe natuurgebieden. October 8, 2008.
- De Gelderlander (2008) Nieuwe natuur nadelig. October 8, 2008.
- De Stentor (2008) Natura baart grote zorgen. April 1, 2008.
- Staatscourant (2008) Natuurbescherming leidt tot serieus banenverlies. May, 15, 2008.
- Gelderlander (2009) LTO ziet draagvlak voor natuurbeleid wegebben. February 25, 2009.
- Brabants Dagblad (2009) Natuurbeschermingswet bedreigt boeren. February 25, 2009.
- Polman, J. (2009) Boeren klemvast door Natura 2000. De Stentor. februari 27, 2009, Zwolle.
- De Stentor (2009) Werkgevers vrezen gevolgen Natura 2000. August 10, 2009.
- Agrarisch dagblad (2009) Zware kritiek van Europarelementariers op Natura 2000 in Nederland. April, 18, 2009
- Ministry of Agriculture, Nature and Foodquality (2009) Letter to De Voorzitter van de Tweede Kamer, Natura 2000, PDN.2009.56. June, 30, 2009.
- LTO Noord (2009) Vermeer (LTO) over brief Natura 2000 aan Tweede Kamer: duidelijke verbeteringen, maar zorgen nog niet weg. Public statement.
- Kamers van Koophandel Zuidwest-Nederland (2009) Effecten van Natura 2000 regelgeving nog steeds onduidelijk. Zeeuwse ondernemers dringen aan op speed. Public statement, June 30, 2009, Middelburg.
-

## References

- Alphandéry, P. & A. Fortier, A. (2001) Can a Territorial Policy be Based on Science Alone? The System for Creating the Natura 2000 Network in France. *Sociologia Ruralis* 41 (3): 311-328.
- Arentsen, M., H. Bressers, L. O'Toole (1999) Omgaan met onzekerheid in het milieubeleid: Een analyse met illustraties uit de Nederlandse en Amerikaanse beleidspraktijk', *Beleidswetenschap*, 13 (4): 375-399.
- Backes, Ch. W., A.A. Freriks & A.G.A. Nijmeijer (2006) Article 6 Habitats Directive – A comparative law study on the implementation of art. 6 Habitats Directive in some member states. Centrum voor Omgevingsrecht en Beleid/NILOS/M, Walraven.
- Baker, S. (2003) The Dynamics of European Union Biodiversity Policy: Interactive, Functional and Institutional Logics. *Environmental Politics* 12 (3): 23-41.
- Berkes, F. (2002) Cross-scale institutional linkages: perspectives from the bottom up. In E. Ostrom, T. Dietz, N. Dolšák, P.C. Stern, S. Stonich & E.U. Weber (eds.). *The drama of the Commons*. Washington: National Academies Press, 293-322.
- Beunen, R. & R.G.H. Van Ark (2007) De politieke dimensie van Natura 2000. *Landschap* 24 (1): 13-20.
- Beunen, R. (2006) Nature conservation legislation & spatial planning: for better or for worse? *Journal of Environmental Planning and Management*. 49 (4): 607-621.
- Bouwma, I.M., D. A. Kamphorst, R. Beunen & R. Van Apeldoorn (2008) Natura 2000 Benchmark. A comparative analysis of the discussion on Natura 2000 management issues. *Wettelijke Onderzoekstaken Natuur & Milieu*, Wageningen.
- Burgman, M. A., D. B. Lindenmayer & J. Elith (2005) Managing landscapes for conservation under uncertainty. *Ecology* 86: 2007–2017.
- CEC (1998) First Report on the Implementation of the Convention on Biological Diversity by the European Community, SEC, 0348.
- CEC (2000) Managing Natura 2000 Sites. The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC. Office for Official Publications of the European Communities, Luxembourg.
- CEC (2003) Commission strategy to protect Europe's most important wildlife areas – frequently asked question about NATURA 2000. European Commission, Brussels.
- CEC (2006) Nature and Biodiversity Cases. Ruling of the European Court of Justice. Office for Official Publications of the European Communities, Luxembourg.
- Chilla T. (2005) EU-Richtlinie Fauna-Flora-Habitat: Umsetzungsprobleme und Erklärungsansätze. *DISP* 163 (4): 28-35.
- Coffey, C. & S. Richartz (2003) The EU Habitats Directive: generating strong responses. Project Deliverable No. D 17. Institute for European Environmental Policy, London.
- De Roo, G. (1999) Planning per se, planning per saldo; Over conflicten, complexiteit en besluitvorming in de milieuplanning. Sdu Uitgevers, Den Haag.
- De Santo, E.M. & P.J.S. Jones (2007) Offshore marine conservation policies in the North East Atlantic: Emerging tensions and opportunities. *Marine Policy* 31 (3): 336-347.

- Fairbrass, J. & A. Jordan (2001) European Union Environmental Policy and the UK Government: A Passive Observer or a Strategic Manager? *Environmental Politics* 10 (2): 1-21.
- Fairbrass, J. (2000) EU and British biodiversity policy: ambiguity and errors of judgement. CSERGE Working Paper, GEC 2000-04. Centre for Social and Economic Research for the Global Environment, University of East Anglia, Norwich.
- Faludi, A. (1984) *Planning Theory*. Pergamon Press, Oxford.
- Faludi, A. (2000) The Performance of Spatial Planning. *Planning Practice & Research* 15 (4): 299-318.
- Geneletti, D., E. Beinart, C.F. Chung, A.G. Fabbri & H.J. Scholten (2003) Accounting for uncertainty factors in biodiversity impact assessment: lessons from a case study. *Environmental Impact Assessment Review* 23 (4): 471-487
- Gibbs, D., A. While, A.E.G. Jonas (2007) Governing nature conservation: the European Union Habitats Directive and conflict around estuary management. *Environment and Planning A* 39 (2): 339-358.
- Goodwin, P. (1998). 'Hired hands' or 'local voice': understandings and experience of local participation in conservation. *Transactions of the Institute of British Geographers* 23 (4): 481-499.
- Goverde, H. & J. Van Tatenhove (2000) Power and Policy Networks. In Goverde, H., Cerny, P., Haugaard, M. & Lentner, H.H. (eds.) *Power and Contemporary Politics*. Sage, London: 96-111.
- Hajer, M. & W. Zonneveld (2000) Spatial Planning in the Network Society – Rethinking the Principles of Planning in the Netherlands. *European Planning Studies* 8 (3): 337-355.
- Hajer, M. (2003a) *Deliberative policy analysis: understanding governance in the network society*. Cambridge University Press, Cambridge.
- Hajer, M. (2003b) Policy without polity? Policy analysis and the institutional void. *Policy Sciences* 36 (2): 175-195.
- Hajer, M.A. & H. Wagenaar (eds.) (2003) *Deliberative Policy Analysis. Understanding Governance in the Network Society*, Cambridge: Cambridge University Press.
- Halpern, B. S., H. M. Regan, H. P. Possingham & M. A. McCarthy (2006) Accounting for uncertainty in marine reserve design. *Ecology Letters* 9: 2-11.
- Harrison, C.M., J. Burgess, & J. Clark (1998) Discounted knowledges: farmers' and residents' understandings of nature conservation goals and policies. *Journal of Environmental Management*. 54 (4): 305-320.
- Healey, P. (1997) *Collaborative Planning. Shaping Places in Fragmented Societies*. Macmillan, London.
- Hiedanpää, J. (2002) European-wide conservation versus local well-being: the reception of the Natura 2000 Reserve Network in Karvia, SW-Finland. *Landscape and Urban Planning* 61 (2): 113-123.
- Hopkins, L.D. (2001) *Urban development. The logic of making plans*. Island Press, Washington.

- Jones, P.J.S. & J. Burgess (2005) Building partnership capacity for the collaborative management of marine protected areas in the UK: A preliminary analysis. *Journal of Environmental Management* 77 (3): 227-243.
- Keough, H.L. & D.J. Blahna (2005) Achieving Integrative, Collaborative Ecosystem Management. *Conservation Biology* 20 (5): 1373-1382.
- Klijn, E-H. & G.R. Teisman (1997). Strategies and games in networks. In: W. Kickert, E-H. Klijn & J.F.M. Koppenjan (eds.) *Managing Complex Networks. Strategies for the public sector*. Sage, London: 98-118.
- Krott, M., Julien, B., Lammertz, M., Barbier, J.-M., Jen, S., Ballestreros, M., & De Bovis, C. (2000) VOicing Interests and ConcErns: NATURA 2000: An ecological network in conflict with people. *Forest Policy and Economics*, 1 (3-4): 357–366.
- Laffan, B. (2004) *Multilevel governance: Bears, Birds and Bogs: The Implementation of EU Nature Conservation Policy in Six States*. Dublin European Institute, University College Dublin, Dublin.
- Ledoux, L., S. Crooks, A. Jordan & R.K. Turner (2000) Implementing EU biodiversity policy: UK experiences. *Land Use Policy* 17 (4): 257-268.
- Lekkerkerk, L.J.A. (1998) Implications of Dutch Ammonia Policy on the Livestock Sector. *Atmospheric Environment* 32 (3): 581-587.
- Ministry of Agriculture, Nature and Food Quality (2006) *Handreiking Beheerplannen Natura 2000 gebieden*. Ministry of Agriculture, Nature and Food Quality, The Hague.
- Ministry of Agriculture, Nature and Food Quality, 2007. *Nota van Antwoord. Inspraakprocedure aanwijzing Natura 2000-gebieden*. Ministry of Agriculture, Nature and Food Quality, The Hague.
- Morris, R.K.A. & C. Gibson (2007) Port development and nature conservation – Experiences in England between 1994 and 2005. *Ocean & Coastal Management* 50 (5-6): p. 443-462.
- Ostermann, O.P. (1998) The need for management of nature conservation sites designated under Natura 2000. *Journal of Applied Ecology*, 35 (6): 968-973.
- Paavola, J. (2004) Protected Areas Governance and Justice: Theory and the European Union's Habitats Directive. *Environmental Sciences* 1 (1): 59-77.
- Palerm, J. (2006) The Habitats Directive as an instrument to Achieve Sustainability? An Analysis Through the Case of the Rotterdam Mainport Development Project. *European Environment* 16 (3): 127-138.
- Pierre, J. & B.B. Peters (2000) *Governance, politics and the state*. Macmillan press LTD, Hampshire.
- Pinton, F. (2001) Conservation of Biodiversity as a European Directive: The Challenge for France. *Sociologia Rurales*, 41 (3): 329-342.
- Regan, H.M., M. Colyvan & M.A. Burgman, 2002. A taxonomy and treatment of uncertainty for ecology and conservation biology. *Ecological applications* 12: 618-628.
- Regan, H.M., Y. Ben-Haim, B. Langford, W.G. Wilson, P. Lundberg, S.J. Andelman & M.A. Burgman (2005) Robust decision making under severe uncertainty for conservation management. *Ecological Applications* 15 (4): 1471–1477.



- Regiobureau Natura 2000 (2009) Pragmatische aanpak Nadere Effectenanalyse verrast. July, 2, 2009. <http://www.natura2000.nl/items/pragmatische-aanpak-nadere-effectenanalyse-verrast.aspx>, last accessed September 18, 2009.
- Rhodes, R.A.W. (1997) Understanding Governance. Policy networks, governance, reflexivity and accountability. Open University Press, Buckingham.
- Rydin, Y. & M. Pennington (2000) Public Participation and Local Environmental Planning: the collective action problem and the potential of social capital. *Local Environment* 5 (2): 153-169.
- Scharpf, W. (1997) Games Real Actors Play. Actor-centred Institutionalism in Policy Research. Westview Press, Oxford.
- Scholl, B. & T. Chilla (2005) Competing policy ideas and the implementation of European environmental policy. Discursive constructions of 'Nature' and 'Space' within the multi-level implementation process of the EU Habitats Directive. 3rd ECPR-Conference, Budapest, 8-10 September 2005.
- Stoll-Kleemann, S. (2001) Opposition to the designation of protected areas in Germany. *Journal of Environmental Planning and Management* 44 (1): 109-128.
- Termeer, C.J.A.M. (1993) Dynamics and stagnation in manure policy: a study on the processes of change in the agricultural network. Vuga, Amsterdam.
- Thomas, D., J. Minett, S. Hopkins, S. Hamnett, F. Fulda & D. Barrel (1983) Flexibility and Commitment in Planning. A comparative study of local planning and development in the Netherlands and England. Martinus Nijhof Publishers, The Hague.
- Trojan, C. (2008) Stikstof/ ammoniak in relatie tot Natura 2000. Een verkenning van oplossingsrichtingen. Rapport van een taskforce onder voorzitterschap van de heer C. Trojan in opdracht van de Minister van Landbouw, natuur en voedselkwaliteit.
- Van Ark, R.G.H. (2005) Planning, contract en commitment. Naar een relationeel perspectief op gebiedscontracten in de ruimtelijke planning. Eburon, Delft.
- Van Bommel K.H.M., J.J. Van Dijk, P.L.M. Van Horne & R. Hoste (2007) Analyse van additionele kosten van Natura 2000 in relatie met ammoniak. Aanvulling op additionele kosten en sociaaleconomische gevolgen van Natura 2000 - Een quick scan. Landbouw economisch instituut (rapport 4.06.04), The Hague.
- Van den Bosch, F.J.P. (2007) Draagvlak voor het Natura 2000 gebiedenbeleid onder relevante betrokkenen op regionaal niveau. Wettelijke Onderzoekstaken Natuur & Milieu, Wageningen.
- Van der Valk, A.J. (1989) Amsterdam in aanleg; planvorming en dagelijks handelen 1850-1900. Planologisch en Demografisch Instituut van de Universiteit van Amsterdam, Amsterdam.
- Veerbeek, I. (2004) Beheren op maat: de rol van beheersplannen voor Vogel- en Habitatrichtlijngebieden. Master Thesis Land Use Planning. Wageningen University, Wageningen.
- WWF (2001) A Race to Protect Europe's Natural Heritage. European snapshot report on the status of implementation of the Habitats Directive. WWF European Policy Office, Brussels.

WWF (2006) Natura 2000 in Europe. An NGO assessment. Implementation status of the Habitats Directive in the EU-25 Member States, Bulgaria, Romania, Croatia and Turkey. WWF, Budapest.

# Chapter 7

The governance of Natura 2000 sites. A comparison between sites in England and the Netherlands



The management of Natura 2000 sites faces several challenges. Responsible authorities need to achieve specific conservation objectives and they need to balance these objectives with social and economic interests. This gives them a very specific role in the planning and decision making processes about Natura 2000 sites. In this article we elaborate on the way the responsible authorities have organised the planning process. A comparison between cases in England and the Netherlands shows that a planning process in which much emphasis is put on cooperation and creating mutual trust seems to offer better possibilities than a more formal and hierarchical governance style.

Beunen, R. & J. de Vries (n.d.) The governance of Natura 2000 sites. A comparison between two sites in England and the Netherlands. *Sociologia Ruralis* (in review).

## Introduction

All members of the European Union (EU) are obligated to implement the Birds and Habitats Directives. This implementation includes the designation of Special Areas of Conservation (SACs) under the Habitats Directive and Special Protection Areas (SPAs) under the Birds Directive. Together, these areas form the Natura 2000 network (CEC, 2002). National governments are responsible for the management of these Natura 2000 sites, but in many cases they have delegated this responsibility to local and regional authorities. The responsible authorities need to balance the conservation objectives with social and economic interests. Due to these obligations, the management of Natura 2000 sites has become the responsibility of relevant authorities – a responsibility which these authorities cannot simply leave to private actors (Jones & Burgess, 2005). In many areas the authorities depend on other public and private parties to aid in achieving the conservation objectives, balance the varying interests and agree to the management schemes (Ostermann, 1998; Keough & Blahna, 2006; Hiedanpää, 2002; Pinton, 2001). This means that the authorities need to discuss, negotiate and cooperate with a variety of other actors. The management of Natura 2000 sites includes organising discussions, making decisions about social and economic activities and dealing with conflicts (Beunen & Van Ark, 2007).

We need to study how the Natura 2000 policy is implemented in local and regional practices (cf. Hajer & Wagenaar, 2003; Adger et al., 2003), since the outcomes of political struggles at this level determine how the Natura 2000 sites will be governed now and in the future (cf. Hillier, 2002). Implementation research ‘needs to give attention to the characteristics of the actors required to interact and to the structured relationships between them’ (Hill & Hupe, 2003: 480). The role of government actors within these practices is interesting because they take the formal decisions, and also because they have a strong influence on how the planning and decision-making processes are organised. We are interested in how the responsible authorities deal with this task, how they organise the planning processes, how they involve other actors in these processes and what the outcomes of these processes are.

The implementation of the Birds and Habitats Directives and the management of Natura 2000 sites can be organised in many different ways. National and regional authorities often take the lead, but they need to cooperate with various other actors to fulfil these tasks. In many cases the authorities depend on other actors, and it is thus no surprise that a great deal of attention is given to co-management of protected areas. The EU also promotes the involvement of other actors (CEC, 2000; 2003; 2005) and it is interesting to study how different governments organise this involvement of various actors in planning processes (Van Ark, 2005; Koppenjan & Klein, 2004; Scharpf, 1997).

The experiences with Natura 2000 vary between Member States and between different sites within these Member States. Whereas some authors report positive experiences (e.g. Jones & Burgess, 2005; Milligan et al., 2009), others describe troublesome implementation elsewhere (Stoll-Kleemann, 2001; Hiedanpää, 2002; Krott et al., 2000). Each Member State differs in the way it implements Natura 2000, but the integration of specific conservation objectives with various other social and economic interests is a responsibility and challenge shared by many authorities all over the European Union.

This paper compares the planning processes of two Natura 2000 sites: the Thanet Coast project in England and the formulation of a management plan for the Wieden-Weerribben area in the Netherlands. Both projects were initiated because the responsible authorities wanted to clarify the consequences that designation as a Natura 2000 site would have for the social and economic activities in and around the sites. Both the United Kingdom (UK) and the Netherlands have a long history of nature conservation (Rootes, 2007; Van der Windt, 1995) and spatial planning (Hajer & Zonneveld, 2000). Nevertheless the implementation of the Birds and Habitats Directives seems to have caused more problems in the Netherlands than in the UK (Bouwma et al., 2008). The aim of this paper is to compare the experiences of the two countries and show how the responsible authorities organised the planning processes and how this affected the outcomes of the projects.

The discussion about the governance of Natura 2000 can be placed in the context of the wider discussion about ecosystem management. Various authors have elaborated on the pros and cons of ecosystem management, and the challenges and risks of participatory approaches (see e.g. Pinton, 2001; Goodwin, 1998; Rydin & Pennington, 2000; Ledoux et al., 2000; Keough & Balhna, 2005; Rauschmayer et al., in press). In turn, these discussions are part of a much wider discussion in planning and public policy about the role of governmental organisations and the possibilities of collaborative, cooperative and communicative planning (for example, Healey, 1997; Jordan et al., 2005; Van den Hove, 2006; Van Assche & Verschraegen, 2008).

### **The governance of Natura 2000 sites**

Natura 2000 is a network of sites designated under the European Birds and Habitats Directives. The two directives provide a list of species and habitats that require specific protection and for which the EU Member States are obligated to designate protected areas. This formal designation is based on scientific data only, and in most Member States it is a task coordinated by the national government. Designation as such does not protect the area, and the real implementation of both directives and the protection of species and habitats is something that must be achieved at the site level. The local and regional practices, where conservation objectives must be weighed against other

objectives and where they are integrated into other policies, will determine the success of Natura 2000 (Beunen et al., 2009; Alphonché & Fortier, 2001).

The designation of Natura 2000 sites has faced delays in many countries. Currently most countries have finished this task, although some still have to get their lists formally accepted. The next challenge is to organise the management of all these sites. Most countries have delegated this task to local and regional authorities and/or nature conservation agencies. These organisations have to think about the measures that are necessary to achieve conservation objectives, and they are responsible for preventing deterioration of the sites. In many areas, the authorities also need to think about what the consequences of designation as a Natura 2000 site might be for other social and economic activities in and around the site. This is not an easy task, and it is therefore gaining more and more attention in discussions and debates about Natura 2000 (see Beunen, 2006; Scholl & Chilla, 2005; Stoll-Kleemann, 2001).

In many cases the implementation of Natura 2000 implies that current land use regimes and policies need to be adjusted (Beunen, 2006; Gibbs et al., 2007). Gibbs et al. (2007) argued that attempts to extend and redefine protected natural areas often collide with established modes of spatial regulations. In many areas, authorities and various other actors are struggling with the implementation of this new conservation regime. All these actors give meaning to new rules and have ideas about the implications of these new rules for specific cases (Beunen & Van Dijk, 2009). Governmental organisations still have a very specific role in these struggles. They are responsible for organising the decision-making process and involving other actors in this process, while still remaining the legal authority that takes decisions (cf. Bevir, 2004; Pierre & Peters, 2000). The implementation of Natura 2000 provides interesting examples of the roles governments can play in planning processes.

## **Research method**

We chose to study two projects in which current policies and management had to be revised in order to include Natura 2000 objectives. In both of these cases, the regional authority organised a planning process in which it sought agreement with other stakeholders regarding a management plan for the Natura 2000 site. The first project was the Thanet Coast project in England, the second was the formulation of a management plan for the Wieden-Weerribben area in the Netherlands. A more detailed overview of both projects will be given in the following sections.

We conducted an extensive literature study and interviewed a variety of people to get a good impression of the two projects and of the wider discussion about Natura 2000 that took place in the UK and the Netherlands. We held 21 interviews with people from conservation agencies, local and regional authorities, representatives of fisheries and

farmers, as well as individual farmers and fisherman. The interviews were semi-structured which allowed us to discuss important topics. These topics included (i) process organisation, (ii) stakeholder involvement, (iii) information provision and (iv) the interviewees' feelings about the process and project leaders. During the interviews, we gave the interviewees enough space to talk freely about the matters they thought were important. In addition to the interviews, we studied the various websites of the organisations involved in the projects and various documents about both areas and the projects that took place in these areas.

## **The Thanet Coast**

### ***The area***

The Thanet Coast is situated in Kent County in the southeast of England. The area is characterised by chalk rocks, lagoons, cliffs, beaches and mud flats. The site was designated due to its European nature value with regard to its chalk reefs, submerged sea caves, over-wintering populations of turnstones and golden plovers, and breeding grounds for little terns (JNCC, 2008).

Various towns are situated near the coast, and about 127,000 people live in the coastal area. The Thanet Coast has been an important tourist destination for decades. Due to a change in the economics of tourism (cheap package holidays abroad), the number of tourists began to drop at the end of the 1970s. In recent years, however, the numbers seem to have recovered. Nowadays, tourism is concentrated in Broadstairs and parts of Ramsgate, with about 2 million visitors a year.

### ***The project***

The Thanet Coast project was initiated by Natural England at the end of the 1990s, following its designation as a Special Area of Conservation (SAC). The project began with the formation of a Management Group. This Management Group was composed of the ten relevant authorities holding statutory responsibilities in the area. This group met twice a year to review management progress and reviewed the management scheme every six years. The Management Group was chaired by Natural England. At the same time, a Scientific Coastal Advisory Group was formed to discuss management and research issues and to keep the site protection up to date with the latest scientific information.

At the start of the project, various workshops were held to involve public and private organisations and interested people. The aim of these workshops was to inform and involve local people in the management of the area. According to Natural England and the project team, 'all people' from Thanet were invited to be part of the process and



nearly all user groups were involved. It is interesting to note that the Thanet District Council refused to cooperate at the beginning of the project because they were afraid that the designation of the SAC would impose restrictions on economic development. They changed their opinion after seeing the positive results of the first workshops organised by English Nature (today's Natural England). Nowadays, the District Council is one of the main financiers of the project.

During the first workshops, there was a tendency to keep expectations low in order to build a relationship based on realistic perspectives. The project team chose to be open about the fact that they did not know everything. As the project leader said, it was 'A little bit like trial and error'. He believed that the uncertainties about planning the project influenced their behaviour: 'We had to be open about the fact that we didn't know everything. That was the only way the workshops could help us know how to continue.'

The composition of the stakeholder group changed several times during the project, because new people joined the process by taking part in activities and workshops at least twice a year. The stakeholders were in close contact with the project team. All the interviewees said that the project leaders did a great deal, were always available, were open and coordinated the project in a good way. Several of those interviewed said the approach chosen by the project team was very positive. The 'common sense approach' resulted in a lot of space for different options. The interviewees said that space was created for everyone to express their opinion and that this gave them the feeling that the process was really open. During the project, an independent facilitator offered various opportunities for stakeholders to express how they felt, and this was experienced as something positive. After the workshop, the reports were sent around so that everyone could respond. This double check enabled people to speak up without anyone being in doubt about what was said. In addition, various interviewees said that besides the official occasions, it was always possible to contact the project team – just by picking up the phone. The discussion could be 'About everything you think that was important'. In some cases this led to new discussions, workshops or to new issues being incorporated into the management plan. An example is the inclusion of the protection of seals and cliff tops. This flexibility in the process gave people the feeling that they were being taken seriously.

It was clear from the various interviews that information about the project was always available and that people could very easily ask further questions. One of the interviewees commented that building a relationship between citizens and local authorities was one of the most important things accomplished by the project team for the project. The stakeholders had a significant influence on the management scheme. The project team stated that the management scheme was developed based on the information from the scientific advisory group as well as the information from other stakeholders.

During the project, various contracts were used to confirm arrangements that had been made. One example was the contract between the relevant authorities and the project team about the objectives of the project team. This was done because the project team was paid by these authorities. Other contracts were used to make agreements between recreational users and Natural England, to clarify the kinds of activities that were allowed or prohibited at the nature sites. Another contract was made between the coastal wardens and the project team to involve local residents in the protection of birds in a beach area or bay close to their homes. The coastal wardens were volunteers who talked with other residents if they caused too much disturbance to the environment.

### ***The outcomes***

Almost all the people interviewed considered the project to be a success. Their enthusiasm was shared by many people who were involved in the process in various ways. The project initiated many activities, created a great deal of awareness and changed the behaviour of people who used the area because they gained more awareness of how their activities influenced specific species or habitats. These efforts are likely to lead to better protection, which is shown, for example, in a study taken of turnstones. This study shows that the level of disturbance to turnstones by coastal activities was reduced by as much as 40% since the beginning of the project (Webb, 2004).

From the interviews it could be derived that people had low expectations in the beginning towards the project and the process. This was especially due to it being difficult to predict the results. Later on the project produced more results than expected, especially activities like beach excursions and all kinds of voluntary codes that aimed at limiting disturbance of the area, and this made people very happy.

The open and flexible approach of the project was the result of a good balance between a hierarchical and a bottom-up approach. The local approach, with its flexibility towards incorporating other ideas and interests, resulted in the active involvement of a wide variety of people, while at the same time contracts were used to clarify responsibilities and agreements.

## **Wieden and Weerribben**

### ***The Area***

The Wieden and Weerribben are two large nature areas covering a total of 12,600 ha in the north-eastern part of the Netherlands. The sites consist of lowland peat, smaller and larger bodies of open water, reed lands, swamp forests and grasslands. This landscape is the result of centuries of peat and reed harvesting. Both areas have been designated as

Natura 2000 sites because of their value for oligotrophic peat, moor and swamp landscapes and the occurrence of species like bittern and black tern (Ministry of Agriculture, Nature and Food Quality, 2008).

The Wieden and Weerribben are situated in the Province of Overijssel. Approximately 40,000 people live in the vicinity of these two nature areas. Most of the land is in use as agricultural land, mainly dairy farms. The Wieden and Weerribben are very famous due to their natural beauty, making them popular among tourists. Each year the area is visited by about one million people.

### **History**

In the beginning of the 1990s, discussions were held in the provincial parliament about the development of new nature reserves between the Wieden and the Weerribben. This discussion was part of the national debate concerning the National Ecological Network, which was developed by the Dutch government to connect nature areas in the Netherlands. In 1994, the first draft of the Provincial Development Perspective on Northwest Overijssel (*Gebiedsperspectief Noordwest Overijssel*) was published. This provincial document stated that 3,000 ha of new nature should be developed. Between 80 to 100 farmers would have to leave to make room for these new nature areas. In the definitive version of the Provincial Development Perspective this was brought back to 1,500 ha, and as compensation, the farms outside the new nature areas were allowed to develop and grow. In addition, 350 jobs would be created in the recreational sector (Metz, 1998). Immediately after the completion of the Perspective it became clear that both the Wieden and the Weerribben would be designated as Natura 2000 sites. At first, this was not a source of concern. One of the interviewees stated: 'some farmers were worried and went to the Ministry of Agriculture, Nature and Food Safety. At the Ministry an officer told them not to worry. He suggested just replacing some nature areas if there was a big problem.' After a while, opinions about the consequences of the designation changed. Currently there is a great deal of discussion about the borders of the Natura 2000 sites and about the consequences for activities in and around the sites. In 2005, the Dutch national government decided to make the formulation of management plans for all Natura 2000 sites obligatory (Beunen & Van Ark, 2007; Ministry of Agriculture, Nature and Food Quality, 2006). The Province of Overijssel decided to begin immediately with the management plans for the Wieden-Weerribben area because it wanted to provide clarity as soon as possible.

### **The project**

The Province of Overijssel started the project as a pilot project for Natura 2000 in the Netherlands. The main reason to begin the project was to provide clarity about the

consequences of designation as a Natura 2000 site for the social and economic activities in and around both sites. The uncertainties about the consequences needed to be clarified. The project began with the formation of a workgroup in March 2006. This workgroup consisted of representatives from the two nature conservation organisations that managed the sites, the local and regional authorities, the Land Allocation Committee and the Ministry of Agriculture, Nature and Food Safety. In August 2007, representatives from the agricultural sector, reed growers and the association of tourism entrepreneurs were added to the workgroup. The people who lived, worked and recreated in the area, i.e. the residents, farmers and visitors at both sites, were not involved in the process.

The workgroup faced many uncertainties. These included issues about how to organise the process, how to determine the exact borders of the Natura 2000 sites, how to deal with ammonia deposition and how to manage the water tables and water quality in and around the sites. The main issues for the management of the area were the quality of the water and the water tables. To protect the nature values, the deposition of ammonia had to be reduced. This problem was complex, however, because deposition is caused by ammonia emissions from farms, industry and traffic elsewhere.

The workgroup began collecting information, which proved to be problematic and very time consuming. During this period there was a great deal of discussion and disagreement about the available information. One of the interviewees said: 'everybody stood in the trenches.' Some members of the workgroup felt that information collection was something that should not be the responsibility of the workgroup: 'information collection in the beginning should be done by experts, not by workgroup members. This would ensure that objective information could be provided.' These discussions took a long time, and another consequence was that people questioned the information found by other workgroup members. One of the interviewees even states: 'Information brought in by us was questioned. This made us angry and it caused disappointment amongst our council members.' In this situation, there were negative expectations about the collected information.

At a national level, there was a great deal of discussion about generic policies for dealing with ammonia emissions caused by farms. The workgroup was waiting for the national government to make a decision on this issue. This debate caused a great deal of uncertainty among farmers everywhere in the Netherlands. The workgroup waited a long time for the national government to formulate new policies for ammonia reduction. After a great deal of discussion, these policies were rejected by the courts, and gradually everyone became aware that such problems should be dealt with at a site level. The uncertainties about these national policies, the possible consequences for agricultural activities around Natura 2000 sites and the formulation of management plans led to further delays and more uncertainty for everyone involved in the project. This was

mentioned by all the interviewees and they all admitted that this caused uncertainties for the future process.

During the process, it became clear that specific decisions were required concerning the borders of the sites, survey data, ammonia regulations and the influence of the water quality on peat growth. The work group was not allowed to do make these decisions, and therefore a steering committee was formed in which representatives of the various authorities took part. At that time the project group made some agreements about the definite borders and about the reference date, because 'the ministry could not give any clear information about these issues', reported one of the interviewees.

Another significant issue that the workgroup had to deal with was the financing. At the time of the interviews it was still not clear if there was enough money to finance the measures proposed in the management plan. According to one of the workgroup members, 'We are now developing a management plan with affordable measures, we have to wait and see if the measures proposed in the management plan are found sufficient by the Ministry, otherwise we can start all over again.' This uncertainty about the expectations of the Ministry towards the management plan and management measures was a big risk for the workgroup at the time of the interviews.

Discussions about the management plan always took place in the workgroup meetings. In between the meetings there was hardly any contact about the project except with the project leader. Most interviewees said that there was no reason to have contact in-between because everything was discussed in the meetings. One of the interviewees stated: 'the project is taking so long, it does not make sense anymore to meet in-between.'

### ***The outcomes***

The focus of the project was mainly on the formulation of a management plan. This document had been nearly completed in 2008. The management plan acknowledged that nature values in both sites depend on management by farmers and reed growers and stated that the designation as a Natura 2000 site has almost no consequences for the present social and economic activities (Provincie Overijssel, 2008). In a few cases an activity can only continue if it meets specific requirements.

The management plan was becoming more concrete during the time the interviews were taking place but no one knew how expensive the actual management programme would ultimately be. In addition, it was not clear who would pay for the management programme. The Water Management Board (*Waterschap*) and municipality had already admitted lacking any additional funds to enable the management programme to realise the Natura 2000 objectives.

This means that the final result of the workgroup might be different from what was expected by the Ministry and provincial authority. There is a serious risk that the management measures will not be sufficient to realise the nature goals. As one of the interviewees commented, 'well if the Ministry wants more, then they will have to pay. But it does make me wonder what will be left of all the good intentions at the beginning regarding Natura 2000. If the plan is toned down, I question whether Natura 2000 is still what we need.'

Several interviewees stated that local people, mainly farmers, were unhappy with the delays in the project and that they were starting to lose confidence in the project and the government. Their mistrust was amplified because the project team provided very little information about the protected sites or about Natura 2000 in general to the people living and working in and near the nature sites. This lack of information caused a great deal of speculation. As a consequence, the farmers and other inhabitants started asking the municipalities and the province for more information. However, the workgroup did not want to provide any information because they were also uncertain about the consequences of Natura 2000. The result was that 'farmers still live in a uncertain situation, which creates mistrust towards the government and the management plan.' Workgroup members and other groups of inhabitants lost their trust in the Ministry, the province and Natura 2000. This was due to the lack of information provided about Natura 2000, the uncertainties that arose from the recent history of the Provincial Development Perspective, and the inflexibility of the responsible authorities to deal with questions from the public.

### **Comparing the two cases**

The planning context in both cases is fairly comparable. Both Natura 2000 sites are situated in areas where many social and economic activities take place. Many of these activities could have a severe impact on the management objectives. At the same time the natural beauty of these areas is an important reason why some of these activities take place there. Many of the activities are therefore interrelated. Moreover, the people and organisations that are involved with these activities are interconnected and depend on each other. The reasons for beginning the projects were also similar. In both areas a regional authority (Natural England in the UK and the Province of Overijssel in the Netherlands) initiated the planning process because they wanted to provide clarity about the consequences that designation as a Natura 2000 site would have for social and economic activities.

For our study we compared the ways in which the responsible authorities organised the planning processes and what the outcomes of the processes were. The study has shown some remarkable differences between the two projects. The first difference is the

number of people who were invited to participate in the planning process. In the Thanet Coast project, there was an open invitation to participate in the process, while in the Wieden-Weerribben project, the province decided to limit the workgroup to local and regional authorities, nature conservation organisations and a few representatives from the agricultural and recreational sectors.

Another significant difference was the way in which cooperation was organised. The Thanet Coast project combined formal and professional meetings with workshops and other informal activities, to which everyone was invited to participate. During the project, there was a great deal of attention given to informal communication. This emphasis on the combination of formal and informal communication contrasts with the situation in the Netherlands. The province of Overijssel chose to implement Natura 2000 through a hierarchical and fixed approach. They chose this approach because they first wanted to have more clarity about the consequences of Natura 2000 before informing local inhabitants. In general, the professional involvement of the various stakeholders and the limited involvement of local inhabitants in the process influenced the process enormously. This strict approach led to a lack of information being given to the public, who remained uncertain about the consequences of Natura 2000.

Another difference concerns the way in which the responsible authorities dealt with the uncertainties within the process. The project team of the Thanet Coast project decided to share these uncertainties with all the people who became involved in the project. In contrast, the province of Overijssel decided to deal with the uncertainties within a small group of people and to be very reserved in providing information to the public. This difference was shown in the formal and informal way information about the project was provided. While information about the Thanet Coast project was available on their website, in newspapers and in various types of flyers and booklets, the only tangible product of the Wieden-Weerribben project was a general leaflet and the draft Management Plan, which was available on the internet site of the province of Overijssel.

Due to the open approach of the Thanet Coast project, it was possible to place the conservation objectives in a broader context that included other values and interests, such as the protection of seals and the conflicts between different beach users. The Management Plan for the Wieden-Weerribben was only about the very specific conservation objectives.

The outcomes of both projects differed as well. Whereas most people were very enthusiastic about the Thanet Coast project, this enthusiasm was missing in the Wieden-Weerribben project. In the latter area, many people (mainly farmers) were very suspicious about the project and about Natura 2000 in general. The enthusiasm that characterised the Thanet Coast project created a great deal of awareness about the conservation objectives and made people organise various kinds of activities to promote

the sustainable use of the area. There are strong indications that all these efforts have had a good effect and that over-wintering birds are experiencing less disturbance than before.

The main outcome of the Wieden-Weerribben project is the Management Plan, but due to uncertainties about financing it remains questionable if all the necessary measures can be taken.

## **Discussion**

This study shows that the governance of Natura 2000 sites can be organised in various ways, and that this has some important effects on the outcomes of the planning process. Over the years, the Thanet Coast project has become a success. Many people are involved in the project and they all share a great enthusiasm. This enthusiasm is also the basis of the ongoing success. The enthusiasm is mainly built on the bond people feel with 'their coast'. During the project, the team managed to instigate this common feeling and to create a bond between the people involved. This joint responsibility to take care of the coast resulted in various types of initiatives; when these initiatives were successful, this increased the trust in the project. The focus of the project was on creating good relations and trust through informal contacts and the possibilities for sharing ideas. Due to the flexible and open approach, the process took a long time, but resulted in people gaining more faith in the process, the project team and each other. Voluntary agreements that would help prevent disturbances could be made because all parties had a positive attitude towards the project. The shared responsibilities were an important result of the specific approach that was used and show that the long-term benefits of such a planning approach outweigh the short-term difficulties that are often associated with it (cf. Keough & Blahna, 2006).

In the Wieden-Weerribben project, the focus was on designing and producing the management plan. The responsible authority created this plan in cooperation with other governmental organisations and representatives from NGOs. Other stakeholders, such as local inhabitants, were only informed through information evenings. During the process, a great many people lost faith in the process and in the government, because the uncertainties about the future for the inhabitants remained. Due to the growing distrust among farmers and other local inhabitants, it has remained difficult to reach agreement. Even more striking is the fact that the management plan stated that the consequences for current activities, including agricultural and tourist activities, have been very limited. It appears, therefore, that Natura 2000 did not have any effect on the current activities in the Wieden-Weerribben area. Nevertheless it resulted in the organisation of a long process which created a great deal of uncertainty and led to many discussions, conflicts and a great deal of mutual distrust – all of which seem to have been unnecessary.



The most important difference between the two projects is found in the possibilities that were created for stakeholder cooperation. This cooperation was important because it created possibilities for:

- becoming acquainted with one another
- sharing ideas
- broadening the goals of the project and including other values and interests
- appealing to the inhabitants' sense of responsibility and their desire to care for their own environment
- influencing decisions and sharing responsibility for the project and the area
- developing mutual trust

Authorities should be aware of the importance of cooperation. There are several reasons for encouraging this cooperation, such as increasing democratic ideals and including local ideas and knowledge (cf. Hajer & Wagenaar, 2003; Alphandéry & Fortier, 2001; Ledoux et al., 2000; Harrison et al., 1998), but the most important reason lies in the fact that the responsible authorities depend on other stakeholders to be able to achieve conservation objectives. These other stakeholders can be landowners in and near the sites whose activities need to be balanced with conservation objectives. At many Natura 2000 sites, for example, low-intensity agricultural practices such as grazing are necessary to manage specific habitats (Ostermann, 1998). It is important to take into account the fact that cooperation in networks – instead of hierarchical relationships – requires other mechanisms that sustain cooperative behaviour (Bijlsma & Van der Bunt, 2003).

Although various authors have argued that stakeholders should be able to develop their own institutions within these cooperative processes (Ostrom, 1990; Rydin & Pennington, 2000), we have seen that the responsible authorities still take the lead. These authorities make decisions about the project approach, about the people and organisations involved and what they do with the ideas and input from all the stakeholders. But they also need to make formal decisions about the outcomes of the project. Therefore they have specific responsibilities for the management of Natura 2000 sites.

Within planning processes such as Natura 2000 implementation, it is vital that the responsible authorities realise the consequences of interdependence and create an arena in which all actors can enjoy mutual understanding and trust (cf. Hajer & Wagenaar, 2003). Mutual understanding (but not necessarily consensus) is an important outcome of a planning process (Innes, 2004; Ledoux et al., 2000). The governance of Natura 2000 sites involves a struggle of ideas and interests. Governmental organisations have the responsibility to facilitate this struggle. Not only private parties, but also politicians and civil servants need to be involved in the interactive process from the beginning, because

they need to ensure that the rules and the roles of the interactive process become embedded in the current institutions to avoid conflicts with formal decision-making processes (Edelenbos, 2005). We are well aware that the organisation of a good planning process is often much more difficult than organising a technocratic, top-down planning process and is thus a challenge for the responsible authorities. This calls for much more research into these processes and the development of inter-organisational cooperation and trust in order to gain more understanding of the possibilities and dilemmas of these collaborative planning processes.

## **Conclusions**

The planning and management of Natura 2000 sites and the ways in which ecological objectives are related to social and economic activities will, in the long term, determine the success of European nature conservation policies. Therefore, it is important to learn from current experiences in the regions where people are dealing with these issues. We have made a detailed study of the planning processes at two Natura 2000 sites in two Member States. Our focus was on how the responsible authorities organised the planning and decision-making processes, and how they involved other parties in these processes. This study shows that different planning and management approaches can be used and that these approaches affect the ecological and social success of the planning process. Although the approaches were context-dependent, we can learn some important lessons, in both a positive as well as a negative sense, from the two case studies.

The authorities responsible for the implementation of Natura 2000 and the management of the designated sites needed to balance conservation objectives with social and economic interests. In many situations the planning and management of Natura 2000 sites is a process in which various individuals and organisations are involved. These individuals and organisations depend on each other to achieve their own goals. Nature conservation, for example, depends on the cooperation of farmers and the tourism sector to prevent nitrification and habitat disturbance. To achieve and manage conservation objectives, therefore, the responsible authorities depend on people who live, work and recreate in and near the Natura 2000 sites.

Our study showed that the way in which the responsible authorities organise the planning and decision-making process concerning a Natura 2000 site has an important influence on the support for management measures in and near the site. The study showed that in a situation in which the management of the Natura 2000 site depends on many different stakeholders, a planning process that emphasises cooperation seems to offer better possibilities than a more formal and hierarchical planning process. A cooperative planning process in which uncertainties and responsibilities are shared among the participants strengthens awareness of conservation objectives and

encourages mutual trust among the stakeholders. These are aspects that are invaluable for the sustainable management of Natura 2000 sites. The responsible authorities should therefore invest in their relationships with other people and organisations. They should actively create a network in which ideas, uncertainties and responsibilities are shared. This is a prerequisite for the development of mutual trust, and trust in turn is necessary for further cooperation.

Intangible products of planning processes are more valuable in the long term than short-term output. It is not the specific plans or measures that will be decided upon, but the awareness, the shared responsibilities, the joint efforts and mutual understanding and trust among the participants that form the foundation for further cooperation. And this further cooperation is extremely important, because the management of a Natura 2000 site is something that does not stop once the measures have been agreed upon.

## References

- Alphandéry, P. & A. Fortier (2001) Can a Territorial Policy be Based on Science Alone? The System for Creating the Natura 2000 Network in France. *Sociologia Ruralis* 41 (3): 311-328.
- Adger, W.N., K. Brown, J. Fairbrass, A. Jordan, J. Paavola, S. Rosendo & G. Seyfang (2003) Governance for sustainability: towards a 'thick' analysis of environmental decision making. *Environment and Planning A* 35 (6): 1095-1110.
- Beunen, R. & T. Van Dijk (2009) The relation between rules and land use. *European Planning Studies*. 17 (12): 1797-1815.
- Beunen, R. & R.G.H. Van Ark (2007) De politieke dimensie van Natura 2000. *Landschap* 24 (1): 13-20.
- Beunen, R. (2006) Nature conservation legislation and spatial planning: for better or for worse? *Journal of Environmental Planning and Management*. 49 (4): 607-621.
- Beunen, R., W.G.M. Van der Knaap & G.R. Biesbroek (2009) Implementation and Integration of EU Environmental Directives. Experiences from the Netherlands. *European Environment* 19 (1): 57-69.
- Bevir, M. (2004) Governance and Interpretation: What are the Implications of Postfoundationalism? *Public Administration* 82 (3): 605-625.
- Bijsma, K.M. & G.G. Van der Bunt (2003). Antecedents of trust in managers: a "bottom up" approach. *Personal Review* 32 (5): 638-664.
- Bouwma, I.M., D. A. Kamphorst, R. Beunen & R. Van Apeldoorn (2009) Natura 2000 Benchmark, A comparative analysis of the discussion on Natura 2000 management issues. WOTNM-Rapport. Wettelijke Onderzoekstaken Natuur and Milieu, Wageningen.
- CEC (2002) Commission Working Document on Natura 2000. Brussels. [http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000/2002\\_faq\\_en.pdf](http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000/2002_faq_en.pdf)
- CEC (2005) Natura 2000, conservation in partnership. [http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000/conservation\\_in\\_partnership.pdf](http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000/conservation_in_partnership.pdf)
- CEC (2003) Natura 2000 and forests 'Challenges and opportunities' Interpretation guide, [http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000/n2kforest\\_en.pdf](http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000/n2kforest_en.pdf)
- CEC (2000) MANAGING NATURA 2000 SITES. The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC. [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision\\_of\\_art6\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision_of_art6_en.pdf).
- Edelenbos, J. (2005) Institutional Implications of Interactive Governance: Insights from Dutch Practice. *Governance: An International Journal of Policy, Administration, and Institutions*, 18 (1): 111-134.
- Gibbs, D., A. While & A.E.G. Jonas (2007) Governing nature conservation: the European Union Habitats Directive and conflict around estuary management. *Environment and Planning A* 39(2): 339-358.
- Goodwin, P. (1998) 'Hired hands' or 'local voice': understanding and experience of local participation in conservation. *Transactions of the Institute of British Geographers* 23 (4): 481-499.

- Hajer, M. & W. Zonneveld (2000) Spatial Planning in the Network Society – Rethinking the Principles of Planning in the Netherlands. *European Planning Studies* 8 (3) pp. 337-355.
- Hajer, M.A. & H. Wagenaar (2003) Introduction. In: in M.A. Hajer and H. Wagenaar (Eds.) *Deliberative Policy Analysis. Understanding Governance in the Network Society*. Cambridge University Press, Cambridge: 1-30
- Harrison, C.M., J. Burgess & J. Clark (1998) Discounted knowledges: farmers' and residents' understanding of nature conservation goals and policies. *Journal of Environmental Management* 54 (4): 305-320.
- Healey, P. (1997) *Collaborative planning: shaping places in fragmented societies*. MacMillan, Hampshire.
- Hiedanpää, J. (2002) European-wide conservation versus local well-being: the reception of the Natura 2000 Reserve Network in Karvia, SW-Finland. *Landscape and Urban Planning* 61 (2): 113-123.
- Hill, M. & P. Hupe, (2003) The multi-layer problem in implementation research. *Public Management Review* 5 (4): 471-490.
- Hillier, J. (2002) *Shadows of power: an allegory of prudence in land-use planning*. Routledge, New-York
- Innes, J. (2004) Consensus Building: Clarifications for the Critics. *Planning Theory* 3 (1): 5-20.
- JNCC (Joint Nature Conservation Committee) (2008) Thanet Coast, site details. <http://jncc.gov.uk/protectedsites/sacselection/sac.asp?EUCode=UK0013107>.
- Jones, P. & J. Burgess (2005) Building partnership capacity for the collaborative management of marine protected areas in the UK. *Journal of Environmental Management* 77 (3): 227-243.
- Jordan, A., R.K.W. Wurzel & A. Zito (2005) The Rise of 'New' Policy Instruments in Comparative Perspective: Has Governance Eclipsed Government? *Political Studies* 53 (3): 477-496.
- Keough, H.L & D.J. Blahna (2006) Achieving Integrative, Collaborative Ecosystem Management. *Conservation Biology* 20 (5): 1373-1382.
- Knill, C. & A. Lenschow (1998) Coping with Europe: the impact of British and German administrations on the implementation of EU environmental policy. *Journal of European Public Policy* 5 (4): 595-614.
- Koppenjan, J.F.M. & E.H. Klijn, (2004) *Managing Uncertainties in Networks: A Network Approach to Problem Solving and Decision Making*. Routledge, London.
- Krott, M., B. Julien, M. Lammertz, J.M. Barbier, S. Jen, M. Ballestreros & C. De Bovis (2000) VOicing Interests and ConcErns: NATURA 2000: An ecological network in conflict with people. *Forest Policy and Economics* 1 (3-4): 357-366.
- Ledoux, L., S. Crooks, A. Jordan & R.K. Turner (2000) Implementing EU biodiversity policy: UK experiences. *Land Use Policy* 17 (4): 257-268.
- Ministry of Agriculture, Nature and Food Quality, 2008. Aanwijzingsbesluit Natura 2000 gebied Wieden. <http://www.synbiosys.alterra.nl/natura2000/gebiedendatabase.aspx?subj=n2kandgroep=5&id=n2k35>.

- Metz, T. (1998) *Nieuwe Natuur. Reportages over veranderend landschap*. AMBO, Amsterdam.
- Milligan, J., T. O’Riordan, S.A. Nicholson-Cole & A.R. Watkinson (2009) Nature conservation for sustainable shorelines: Lessons from seeking to involve the public. *Land Use Policy* 26 (2): 203-213.
- Ministry of Agriculture, Nature and Food Quality, 2006. *Handreiking Beheerplannen Natura 2000 gebieden*. Ministry of Agriculture, Nature and Food Quality, The Hague.
- Ostermann, O.P. (1998) The need for management of nature conservation sites designated under Natura 2000. *Journal of Applied Ecology* 35 (6): 968-973.
- Ostrom, E. (1990) *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press, New York.
- Pierre, J. & B.G. Peters (2000) *Governance, politics and the state*. Macmillan press LTD, Hampshire.
- Pinton, F. (2001) Conservation of Biodiversity as a European Directive: The Challenge for France. *Sociologia Ruralis*, 41 (3): 329-342.
- Provincie Overijssel, 2008. *Beheerplan Wieden-Weerribben*. Provincie Overijssel, Zwolle.
- Rauschmayer, F., S. Van den Hove & T. Koetz (2008) Participation in EU biodiversity governance: how far beyond rhetoric? *Environment and Planning C: Government and Policy*. 27 (1): 42-58.
- Rootes, C. (2007) *Nature protection organizations in England*. Centre for the Study of Social and Political Movements, Working paper 1/2007. University of Kent, Canterbury.
- Rydin, Y. & M. Pennington (2000) Public Participation and Local Environmental Planning: the collective action problem and the potential of social capital. *Local Environment* 5 (2): 153-169.
- Scharpf, W. (1997) *Games Real Actors Play. Actor-centred Institutionalism in Policy Research*. Westview Press, Oxford.
- Scholl, B. & T. Chilla (2005). Competing policy ideas and the implementation of European environmental policy. Discursive constructions of ‘Nature’ and ‘Space’ within the multi-level implementation process of the EU Habitats Directive. 3rd ECPR-Conference, Budapest, 8-10 September 2005.
- Stoll-Kleemann, S. (2001) Opposition to the designation of protected areas in Germany. *Journal of Environmental Planning and Management* 44 (1): 109-128.
- Van Ark, R.G.H. (2005) *Planning, contract en commitment. Naar een relationeel perspectief op gebiedscontracten in de ruimtelijke planning*. Eburon, Delft.
- Van Assche, K. & G. Verschraegen, (2008) The Limits of Planning: Niklas Luhmann’s Systems Theory and the Analysis of Planning and Planning Ambitions. *Planning Theory* 7 (3): 263-283.
- Van den Hove, S. (2006) Between consensus and compromise: acknowledging the negotiation dimension in participatory approaches. *Land Use Policy* 23 (1): 10-17.
- Van der Windt, H. (1995) *En dan: wat is natuur nog in dit land? Natuurbescherming in Nederland 1880-1990*. Boom, Amsterdam.

Webb, K.J. (2004). The effects of human activity on the Turnstone *Arenaria interpres* within the Thanet and Sandwich Bay Special Protection Area (SPA). Final Draft Report. Sandwich Bay Bird Observatory, Sandwich.





# Chapter 8

## General Discussion



In the previous chapters the results of empirical and theoretical studies on the implementation of nature conservation policies in planning practices were presented. In this final chapter we combine the various discussions and conclusions and use them to reflect on the implementation of nature conservation policies in the Netherlands and to offer recommendations for planning practices and research.

## **How formal policies and their use in planning practices are diverging**

The analysis of the implementation of the Birds and Habitats Directives in the Netherlands showed that the substantive objectives of these directives have faded into the background. The aim of conserving or improving the quality of the natural environment was overwhelmed by long-term procedures and conflicts over plans and projects. Decision makers, researchers, journalists and conservationists began to focus increasingly on the procedural requirements of both conservation directives. The evolution of ideas about the Birds and Habitats Directives has led to a system in which the substantive objectives and procedural requirements are diverging. The insights into the implementation processes explain why this is happening. The main reasons are the multiple decisions that need to be taken in which biodiversity protection plays a role. Many actors are involved in these decision-making practices, and each of them brings along personal perspectives, ideas and interests. This causes ambiguity in the policy meanings. The decision of legislators to include strict requirements in the nature conservation law that need to be met in formal decision-making processes is as logical as the decision of civil servants and project developers to ignore the nature conservation law because that law could delay or even cancel the project they want to realise. The people who formulate formal policies and the people who implement these policies in various planning practices all have their own perspectives and ideas about the policy meaning. The divergence of ideas about policies and their consequences for planning practices is inevitable and will continue to cause tension and friction in decision-making processes. But the consequences of this uncontrolled evolution seem to be more severe.

As we showed previously, more and more people are doubting or even protesting against biodiversity conservation policy. Most people do not object to specific conservation objectives. Instead, their criticism is mainly aimed at the rigid interpretation and application of nature conservation laws in decision-making practices. They are uncertain about the consequences of these laws and fear future restrictions on their own activities. At the same time, we observed people ignoring or even evading the nature conservation laws. We noticed that an aggregation of individual decisions at the grassroots level was eroding confidence in biodiversity policies; in the long run, this could undermine the trust people have in the decision-making system that has been established for biodiversity conservation. Luhmann (2001) elaborated on the importance of confidence and trust in large functional systems like public policy and law.

If there is a lack of confidence, there will also be a diffuse sentiment of dissatisfaction and alienation or even anomie. This may have no immediate

impact on the system. If trust is lacking, however, this changes the way people decide about important issues. (Luhmann, 2001, p. 100)

In the case of biodiversity conservation, these changes in the way people decide about important issues can have a severe impact on biodiversity. If people lose their trust in the decision-making system and start to evade it, biodiversity will not be protected in the way policy formulators want it to be protected. It could also frustrate the work of conservationists because people tend to associate the work of these people with the negative image of conservation laws.

The discrepancies between what would be a logical or good decision from various perspectives have led to situations that can be described as strange or even ridiculous from a biodiversity conservation perspective. There are many situations in which a decision to do something is logical from a legal point of view, but not from a conservation perspective. An intriguing example is the phenomenon of 'temporary nature'. This is a legal status that can be given to a construction site which assures that no further permission is required to start the construction if a protected species might occupy the site. In the Netherlands this species is often the Natterjack Toad (*Epidalea calamita*, formerly *Bufo calamita*), which has a preference for sandy habitats like construction sites. Although this species has occupied construction sites that later on were developed many times without any problems, this phenomenon became a legal problem because the species is formally protected under Dutch conservation law and because this law was interpreted and applied more strictly after the many lawsuits related to the implementation of the Habitats Directive. Formally, there is a legal problem if someone wants to start construction because this might disturb the species, and that is not allowed without consent. However, this consent is rarely denied because the Natterjack Toad will most likely move to another location when the construction starts, and the development of a specific construction site never has a significant effect on the population of this species. From this perspective, it does not make sense to rigidly apply the conservation law to this situation. Consequently, there is a discrepancy between the letter of the law and the spirit of the law. Current planning and decision-making practices have shown that many people (authorities, developers and consultants) have difficulty in dealing with this difference and prefer a strict interpretation of the law to a more commonsense approach.

Another example was provided by conservationists from Scotland, who are responsible for giving permission to people in cases where bats invade houses. In the past, people with bats in their houses contacted the Scottish Natural Heritage (SNH), which would advise them on when to close the hole or how to remove the bats in such a way that the animals were not harmed or killed. Following a European Court decision, the SNH officials are now required to give their formal permission to remove the bats. This

permission cannot be withheld because the presence of bats in a house entails a potential threat to public health. Providing permission takes time (at least several days, but sometimes several weeks), and people do not want to have a bat flying around in their living room for days or weeks. Therefore, instead of informing the SNH, they prefer to chase the bat away or kill it. The rigid interpretation of the conservation laws that are enforced by higher authorities thus conflict with the more pragmatic approach that the grassroots-level officials preferred to use, and this has led to a growing dissatisfaction with conservation laws, with the agency responsible for the enforcement of these laws and even with the animals (in this case bats) that require protection.

With these examples we want to show that a law can never take account of the complexity of real life, and that there will always be situations which require an exception or a pragmatic interpretation of the law. It is not the law itself, but how the law is interpreted and applied in a specific context that matters. Laws cannot be interpreted and applied uniformly in all contexts. This leaves two possibilities: 1) adapting a law each time an exception needs to be made, like the introduction of temporary nature, or 2) accepting discretion in the interpretation and application of a law. With the emphasis on lawsuits and legal procedures, the second option, which was used in the period before the implementation of the Habitats Directive, has become less attractive because people fear the legal uncertainties it might cause. Consequently, legal and formal compliance started to dominate the discussions and the political decisions.

The growing emphasis on procedural aspects is a self-reinforcing process, and although it does not contribute by definition to improved protection of biodiversity, it is difficult to change current practices and trends. The fact that all kinds of reports are written to support decisions but not to contribute to deliberate decision-making, is both a consequence and a cause of the shift in focus to the procedural aspects of conservation policies. These reports are written because the law requires this. The analysis of lawsuits showed that many plans and projects were annulled in court simply because the required reports were not submitted. The response of the people who were responsible for the projects was rarely to stop the project, but to produce or rewrite the required reports in such way that these met the formal requirements. This proved to be a successful strategy, since most of the projects continued in the long run. Many people stated that these reports were produced primarily because this was formally required, and not because these reports could contribute to the decision-making process. The reports were written to show that plans or projects did not have any significant effects on biodiversity or that there were overriding reasons of public interest to allow the project to go ahead. The people who commissioned, wrote or assessed these reports all acknowledged that in many cases the conclusions of the reports were already known before the report was written, simply because only those conclusions would allow the project to continue. The

implementation of the Birds and Habitats Directives in the Netherlands has thus led to a situation where many reports are written that have only a legal or procedural role and no political or biodiversity conservation role.

The findings of this study are not limited to the implementation of the Birds and Habitats Directives. The implementation of various other environmental and land-use policies faced similar problems (CEC, 2006; Grimeaud, 2004; White & Howe, 2003; Gómez-Limón et al., 2002; Knill & Lenschow, 2000; Barnes & Barnes, 1999; Jordan, 1999). All these policies have one thing in common: they generate a lot of work for initiators of plans and projects, consultancies, advisors and authorities. The formal procedures take a long time, and many people are needed to write the required environmental assessments and legal reports. Therefore, it is even more appalling to conclude that many of the assessments and reports are needed only to sustain decisions that have already been made. As a result, policy aims have been thwarted in planning practices in which social and economic interests prevail over conservation objectives. The policies no longer promote discussions about different land use activities and their relationships, but have caused a procedural struggle between people who pursue special interests. We therefore question the efficiency and legitimacy of all these procedures and their implications for decision-making practices. Many people, including those who commission, write and assess these reports, have complained about these developments. However, people appear to be ignorant about this subject. Frissen (2007) has characterised this as a cultural crisis, which manifests itself if the frequency of performed rituals increases. In this situation, we observed an increased frequency of rituals for producing reports and lawsuits. Their high frequency makes these rituals less convincing each time they are applied. Unfortunately, Frissen's criticism is often received with a similar ignorance and as something that everybody regards as being part of the system. This situation could be considered humorous, were it not for its tragic implications; we spend a lot of time and money on maintaining these systems, even though they do not offer sustainable solutions to the issues we want to deal with (such as biodiversity decline).

What we notice in biodiversity policy, as well as many other policy fields and management situations, are attempts to separate the processes of policy implementation, planning and management from policy formulation. From this perspective on policy implementation it is assumed that these processes can be planned, managed and steered into the right direction as long as the correct instruments, techniques or procedures are used. Implementation, planning or management are regarded as technical and rational endeavours to achieve specific policy objectives. Scientists are seen as the people who can develop knowledge, methods and techniques that can be used to perform the task of policy delivering. This however, largely neglects

the political dimension of these processes and the power plays that continue after a policy is formally accepted and it neglects the fact that people have some freedom in interpreting and applying these policies. Many people therefore have criticised these modernistic thoughts and the rational planning approaches that come along with it (e.g. Van Assche, 2004; 2006; Allmendinger, 2002; Scott, 1998; Clarke & Newman, 1997; Latour, 1993; Fischer, 1990; Van Gunsteren, 1976; Jacobs, 1961). Public policy and spatial planning are processes in which various people compete over means and ends. Planning and management cannot be considered rational, neutral tools for delivering specific ends (cf. Ringeling, 2002). Public policy, spatial planning and management include both struggles over space as well as struggles over the rules of the game and these struggles are interrelated, mixed and largely indistinguishable (cf. Van Assche et al, 2009; Duineveld, 2006; Hillier, 2002; Flyvbjerg, 1998).

What we notice are new forms of malleability thinking that are not aimed at substantial objectives, but on a specific organisation of planning and decision-making processes that should therewith guarantee specific results. These positivistic ideas can be found within discussions about popular themes like New Public Management, collaborative planning, social learning, and transition research. All too often scientific research is presented as an objective evidence why a planning process or a management system should be organised in a specific way (an issue we elaborated on in the following section). Especially ideas about new public management have largely influenced many public policy domains, including spatial planning (e.g. Van Ark, 2005; Clarke & Newman, 1997). These policies show a strong focus on measurable output which is considered to be an indicator for a delivering specific policy objectives. Success or failure is judged on the basis of meeting these preset output targets. However, this one-sided and myopic focus on output leads to a form of conformance that satisfies the formal system, but one in which the output can be very different from the outcomes. Not the overall aims of a policy, but the specific targets become the objective of people's actions and decisions. This leads to conformance to a policy rather than commitment to this policy. The emphasis on conformance has resulted in a lack of attention to the dynamics of organisational processes (Barett, 2004). As a consequence, the formal system is increasingly diverging from real practices. This phenomenon is found in many areas such as medical practice (e.g. Loughlin, 2002), business management (e.g. Kadefors, 2004) and in various policy fields, including nature conservation and spatial planning (Van Ark, 2005). It is also found in science (Frissen, 2007).

### **The relationship between description and prescription in policy research**

Many people consider policy research to be of use if it helps to formulate more effective policies or if it strengthens the implementation of policies. The popularity of strategic

research, like for example, policy research and transition management, can partly be explained by the promise it holds (cf. Fischer, 2003; Fischer, 2000; Clarke & Newman, 1997). For example, the promise that policy research provides clear recommendations for more effective policies. In practice, however, the usefulness of these recommendations is often limited. There are simply too many factors that influence the implementation of policies and therefore these policies will not always work out as expected. This insight was already published by Pressman and Wildavsky in their book *implementation* (1979) with the beautiful subtitle “how great expectations in Washington are dashed in Oakland; or why it’s amazing that federal programs work at all, this being a saga of economic development administration as told by two sympathetic observers who seek to build morals on a foundation of ruined hopes”. The insight is therefore not new and has, for instance, led to more attention given to research perspectives in which the role of government is limited (Pierre et al., 2000).

In this section we criticise both the way policy research is often conducted as well as the way practical recommendations are derived from this research. We argue that there is a clear distinction between the analyses and the recommendations, and that research does not tell us how to organise the world. We certainly do not want to argue that policy research is useless. On the contrary! The value of policy research becomes clear after we have shown what research cannot do. Once we recognise its limitations we can focus on the strong points of research. This will bring us to some modest recommendations. Recommendations that take into account the fact that it is difficult and sometimes even impossible to define generally valid policy measures from policy studies.

Those who analyse socio-political processes will understand that in the socio-political arena, many groups of people, organisations, parties and governments use various means and strategies to attain their ideal society and reinforce their claims (Duineveld, 2004). Examples of these strategies are: lobbying, the formation of networks, coalitions and alliances, playing the media, the use of rhetoric, the selective use of the results of scientific research, making and implementing laws, formal rules and procedures and the formation and transformation of institutions. In short, those who follow Machiavelli, Foucault and Flyvbjerg, in analysing political and social processes and practices as ‘*the continuation of war by other means*’ (Foucault, 2003), will gain insight into the factors, processes and mechanisms that instigate changes or ensure stagnations. These factors will partly be in accordance with the factors already deduced from theory and empirical research. Nevertheless, new factors will come to light that are rarely or never mentioned in the descriptions of implementation processes. They remain invisible because of the existing analysis methods, and perhaps also due to the fact that some factors are considered to be so immoral or undemocratic, that they have become a blind spot for the researchers (cf. Assche, 2004).



The above must be read as a criticism on the way in which the effects of policies are often analysed and at the same time as a recommendation for another, more realistic way of analysing these effects (cf. the chapters on Law and Land Use and Evolution in this book). But even if the analysis within policy research could be more accurate, the question would still remain: can this knowledge, these descriptions, be used for prescriptive purposes? To answer this question we must first acknowledge that the so called 'persistent problems' (environmental, political and social), and the aims and means of policies are not necessarily a given but can be both the outset and the result of social interaction, political decision-making and conflict (Ringeling, 2002; Peters, 2005). Just like the set goals and means the problems are constructed by people and are therefore always the problem definition of certain groups of people. This implies that even in the utopian situation of knowing everything, this knowledge still would not tell us how to act. It would remain a choice which would mean different things to different people. This fact, however, seems to be hard to accept and many governments and researchers collaborate in their quest for control (Gunsteren, 1976, Scott, 1998). This quest for control, called high modernism by Scott, is often referred to as a form of malleability thinking or social engineering. We should add here that malleability is the translation we use for the Dutch word 'maakbaarheid', a term often used within the Dutch context. The term refers to the assumption that governmental and non-governmental actors can reach certain goals using guidelines and other directive means. The term is related to the more broadly and internationally used concept of social engineering. Since malleability seems to be a persistent phenomenon (see e.g. Frissen, 1996; 2007) it is important to keep emphasising the difference between description and prescription.

The ideas of malleability promulgate a misconception in strategic policy research. This misconception more or less synchronises description and prescription, in other words synchronises the process analysis and the recommendations that come from it. For example: analyses from sociology, political sciences and public administration show that steering processes are no longer dominated by the sovereign position of governments (Pierre & Peters, 2000, Hajer et al., 2003, Bevir, 2004). Rather, steering is the result of the working of networks in which various actors participate in relationships that have hierarchic as well as non-hierarchic characteristics and in which governmental organisations can take various positions. However, these analyses do not automatically imply that governments or other actors should set up networks in order to attain their objectives. Perhaps some things should still be directed hierarchically. Chapter 7 for example shows that governmental organisations still play an important role in planning practices because they are organising the planning processes and therewith deciding on who is included in the process and what issues are dealt with. Besides, it is still not sure that networks can be planned. The social mechanisms at work in these networks, like

power and trust, are very complicated and impossible to control. We propose that it is impossible to predict and verify the possible effects of (policy) scientific recommendations. Our recommendations will therefore be modest. Just like other (policy) researchers, we cannot tell administrators what they should do in order to attain their objectives. We can, however, help the people that take part in a political, administrative and social process of spatial planning to act more realistically, by providing them insights into the reality and consequences of policy implementation.

This also applies for presumptions on how strategies, laws, rules, organisations and such should ideally work. An analysis should not be made starting from an idea of how a transition should be conducted, how planning should ideally work or how a political-administrative transition process should develop (cf. Machiavelli). It should be about analysing what really happens (see also: Wissink, 2000; Van Ark, 2005).

The modernistic idea that theories on administrative, political and social processes can be perfect, has to be considered a fairytale. It is more realistic to use theories in a very pragmatic way, customised for a specific problem, in the manner of Foucault and Rorty (Foucault, 1994: 250; Foucault, 1997; 172, Rorty, 1989; Malachowski, 1990). The pragmatic use of theories implies that the researchers try, neither to pretend to construct *the* policy research theory nor *the* policy guidelines. In each individual case, they look for useful theories from disciplines like philosophy, psychology, sociology, public administration and political sciences that can help them analyse and describe the practices they study.

It is impossible to deduce a definite set of useful policy tools, instruments and guidelines from process analysis. Similar to the theories and research methods, the use and functioning of specific means will depend on the particular circumstances and these cannot be predicted beforehand. It is preferable to view the results of studies into policy implementation, planning and political processes et cetera as a set of tools that can or might help steer processes in a desired direction, but it does not do that by definition. One cannot predict what the choice of certain tools should be, nor their effect on a specific case, in advance. It *can* be expected, though, that recommendations on the means that are to be applied (tools, guidelines and such) that are based on a thorough analysis of the specific process, will be much more realistic and will therewith have a higher chance of successful implementation.

## **Recommendations that can help to achieve policy objectives**

Despite all criticism, the ideological assumption that policies, once formulated, will implement themselves, was and still is, popular in practice and in science. As early as the

1970s, researchers argued that the top-down rational approaches to implementation neglected the processes and mechanisms at work during the implementation of a policy (Pressman & Wildavsky, 1973). Nevertheless “... the myth of science providing predictions, based on which policy-makers can mechanistically apply some sort of optimising calculation and come to the ‘optimum’ or ‘best’ decision is still pervasive” (Van den Hove, 2007. p. 820). In this final chapter we would like to present a more realistic perspective on the implementation process and use this to make recommendations for people who design and implement nature conservation policies. We would like to advise policy formulators and implementers to rethink how they want to reach specific conservation objectives. There are many roads that lead to Rome, and no single approach can be applied successfully in all situations. We have formulated recommendations which can help to increase the probability that a chosen road will be travelled successfully.

### **Reframing implementation**

Implementation is worth studying precisely because it is a struggle over the realization of ideas. It is the analytical equivalent of original sin; there is no escape from implementation and its attendant responsibilities. What has policy wrought? Having tasted the fruit of the tree of knowledge, the implementer can only answer, and with conviction, it depends.... (Majone & Wildavsky, 1983, p. 180).

Policy researchers frequently use the term ‘implementation gap’ or ‘implementation deficit’ to describe the shortfall between the goals embodied in particular policies and their impacts on the ground (Jordan, 1999). The extent of the implementation gap depends on the normative standpoint of the researchers and the criteria used (Jordan, 1999; Hill, 1997). The words ‘gap’ and ‘deficit’ imply that it is something that is unwanted, and in many cases the implementation gap is presented as a problem that needs to be solved. The word gap suggests that it is something that can be bridged, and is consequently used by researchers to legitimise further research. However, we should note that the implementation gap is not a real gap, but a gap that is constructed because of the specific way people frame policy implementation. Based on previous research, these people expect (or even predict) specific outcomes of the implementation processes; they are surprised if there is no outcome, or if the outcome is different or unintended.

We now understand that all policies have to be interpreted and applied in a specific context. No context is the same, and a specific context in which a policy is constituted always differs from the conceptualisation of that context during the formulation of the

policy. Differences between the policy perceptions of the many people that interpret and use these policies are simply inevitable. If we remain fixed on bridging the gap and remain blind for its inevitability and the real mechanisms of implementation, we will always see a problem. It is a problem that is inherent to the way implementation is conceptualised. Our problem definition is a result of the kind of questions we asked about our instruments (Ringeling, 2002, p. 23). From another perspective, we can see other problems and look for other solutions. Policy implementation is not the objective, but a means to achieve the specific goals for which the policy was created. The problem of many means, however, is that they become ends in the long run. Implementation is not only about reaching specific outcomes, but also about rethinking the means by which policy objectives can be reached. Much more attention should therefore be given to the process of policy implementation, both in practice and in science. The real effects of policies can only be seen in the long term and reside in their possibilities to initiate and frame discussions and to change the ways people think and act (cf. Cowell & Owens, 2006). The Birds and Habitats Directives, for example, can only be successful if they cause people to rethink their decisions and activities that negatively affect species and habitats. We have shown that in the current situation many people criticise the conservation policies, and that the conservation objectives have become obscured. We recommend looking for different strategies and approaches for the implementation of nature conservation policies like the Birds and Habitats Directives.

### **Take notice of other people's perceptions**

Ducros and Watson (2002) argue that technically sound policies often fail because the circumstances of those ultimately responsible for uptake and on-the-ground implementation are not considered at the design stage. Policy formulators do not always adequately consider the views, perspectives and needs of the users. The same can be said about the authorities that have to implement these policies. The implementation of the Birds and Habitats Directives is a good example of this problem. Many people criticised the fact that only ecological criteria were used in the designation of Natura 2000 sites (Alphandéry & Fortier, 2001). People with other interests felt that they were excluded from the implementation process. However, as we have argued before, the success of Natura 2000 depends on the cooperation of a wide range of stakeholders (land owners and land users, interest groups and local and regional authorities, for example). The implementation of Natura 2000 can surely benefit from attempts to include these stakeholders and their perspectives in the implementation processes.

The authorities that are responsible for the implementation of biodiversity policies should be aware that different implementation strategies can be used and that the conservation objectives can be realised in various ways. In Chapter 5 we discussed the

importance of the planning process, and in Chapter 6 we discussed how a specific implementation style can increase or reduce the chances of success. Using another approach or strategy does not mean that policy objectives should be renegotiated, but that these objectives should be placed within a broader perspective. The case study in Thanet Coast, for example, showed that public support for conservation increased after the Natura 2000 objectives were included as part of wider efforts to protect the natural beauty of the chalk coast, such as landscape and the protection of seals. Local stakeholders and inhabitants could actively participate in the process and contribute their own ideas and perspectives. In many situations there are good possibilities to present conservation objectives in such a way that they can be linked more easily with other perspectives on the organisation and use of the environment. The concept of Ecological Networks, for example, proved to be successful precisely because people could link it to their own perspectives and ideas. To look for these possibilities is one of the most important challenges for responsible authorities.

### **On the importance of communication and information exchange**

An important lesson from this research is that the implementation of new policies can only be successful after the responsible authorities call the policy to the attention of people at the grassroots level, and relevant stakeholders are informed about these policies. Authorities should hold discussions with these stakeholders and explain what kinds of actions are expected from them. The success of nature conservation policies depends on actors knowing about these policies. At the same time we should be aware that 'knowing' is not a guarantee for 'being willing'. Even when people know how to act according to the policy, they can decide to act differently.

For the Birds and Habitats Directives (or other legislation) communication should include a 'translation' of the legal text into ordinary language that can be understood by the people who need to work with these directives. The communication of the policy intentions of the Birds and Habitats Directives was absent for a long time. As a result, most actors did not know how to deal with these directives (cf. Algemene Rekenkamer, 2007; Middelkamp et al., 2007). Communication about policies is therefore important, although its importance as a means to control the implementation process should not be exaggerated. Policies are interpreted and applied in many different contexts by many different actors, and the ideas of the policy formulators are transmitted by various actors. All these people have their own perceptions, interpretations and interests, and these are often reflected in the way they communicate about policies.

During the implementation process, the intentions of the policy formulators become simplified and distorted, and much additional information is added. In chapter 3, we extensively discussed these diverging policy meanings. The message about a policy that

gets through is often different from the message the policy formulators intended. For example, consider how the media created various perceptions of the Birds and Habitats Directives by giving excessive attention to problematic cases and ignoring other cases. In the same way, consultancies, legal advisers, interest groups and politicians have contributed to the 'problems of the Birds and Habitats Directives'. Similar strategies can be used by those who support the policy. They should actively communicate about the necessity, benefits and possibilities of Natura 2000 and show that there are also many cases in which the conservation laws are applied without problems and with positive results.

### **Policies need to be enacted: the importance of political will, enforcement and monitoring**

Policies by themselves are nothing more than ink on paper (or digits in a computer linked to the internet). These policies only mean something after people interpret this ink on paper regarding a policy in a specific context. We have shown that people need to know about a specific policy, but that knowing is no guarantee for being willing. The implementation of policy often fails because people disagree about the objectives or the means. Creating political will and more support for policy objectives is an important responsibility for authorities, organisations and people who are in favour of a specific policy. Nature conservation can only be successful if people are willing to fight for it. This includes discussing, arguing and lobbying during decision-making processes and going to court in cases where the environment is not taken sufficiently into account. Nature conservation organisations have an important task in tracking and critically evaluating the decision-making processes. However, this entails two risks: they may be increasingly regarded as complainers, and they may become tired of criticising the ongoing failures of the authorities. The current political atmosphere seems adverse to a critical attitude, and many options and even laws are devised to circumvent the decision-making procedures, which can sometimes be very long.

The people who support the policies should actively contribute to their implementation. Without action, nothing will happen. There is a wide spectrum of possible action, from creating more realistic policies and more awareness of the policies, to a stricter enforcement of the policies. No single action is the best, and suitable actions can be decided on only with clear insight into the outcomes of policies.

Enforcement is an important aspect of conservation laws. This enforcement, however, seems to be problematic in the Netherlands. In a study on the protection of sites, the Court of Audit concluded that the performance of nature conservation laws insufficiently contributed to the protection of nature (Algemene Rekenkamer, 2007). They found that formal procedures only delayed new projects, but rarely stopped them, and that

compensation for lost natural habits was rarely sufficient. These problems are the result of the responsible Ministries giving insufficient guidance to the authorities in the lower tiers of government that need to deal with the policies and the result of inadequate enforcement. Another analysis of the enforcement of nature conservation laws reached similar conclusions. This study showed that authorities responsible for the implementation of nature conservation laws often lack detailed knowledge about the laws, and that this frustrates the application and enforcement of the laws (Middelkamp et al., 2007). The implementation of the Birds and Habitats Directives and other nature conservation policies can be improved if the responsible authorities organise the enforcement of these policies more effectively. Enforcement refers not only to legal enforcement, but should also include monitoring. The focus of implementation research should not be on formal compliance, but on the process in which various people compete about policy meanings and about the consequences of a specific policy on their own plans and activities. This means studying what happens in planning and decision-making processes and relating this to a specific policy and the various policy objectives. Policy implementation requires continuous reflections on the process and the outcomes. The guiding question should not be “are the objectives being met?”; the questions should be “what happens and why, are there unintended consequences, are they also unwanted, and is this what we want?”. Policy analysis and planning research, similar to what we have presented in this book, are important means of answering these questions.

## Epilogue

Now that we have reached the end of this book, we can reassess the evaluation that Donald et al. (2007) made of the Birds Directive. With the insights into the implementation processes that have emerged from our study, we can argue that the suggestion of Donald et al., that supranational conservation policy can bring measurable conservation benefits, is not a priori wrong, but that it ignores the complex relationships between policies and spatial effects. We now know that their article is a clear example of a discourse in which researchers assume a linear relationship between a policy and a spatial effect, and which reduces the multitude of actions and decisions that are taken after the formulation of a policy to a ‘black box’. Now that we have opened this black box, we can see that all the actions and decisions that affect biodiversity were only partly influenced by the Birds Directive or other nature conservation policies, and that these policies also led to unintended and even unwanted effects. Nature conservation policies are certainly an important means to protect biodiversity, but the real efforts have to come from people who take action and make decisions. Nature conservation policies can

help to create more awareness, support and possibilities for biodiversity conservation, but the implementation of these policies can also result in a growing ignorance, opposition and a waste of time and money. It is therefore necessary – more than ever – to keep the black box open and to study the actions and decisions of people who are involved in various ways in biodiversity conservation. The insights from these studies help us to formulate more realistic policies and plans and to improve the chances for successful implementation.

When Donald et al. (2007) presented their findings and attributed the success of increasing bird populations to the Birds Directive, they disregarded all the actions and decisions that people took and still take to protect bird species. This group includes conservationists who struggle and lobby to protect species and habitats, civil servants who formulate policies, politicians who accept these policies, researchers who study species and ecosystems, and researchers who reflect on the planning and decision-making practices in which decisions about these species and ecosystems are made. This group also includes many citizens who simply enjoy the landscape and its rich biodiversity and spread their enthusiasm to others, thereby increasing the support for the future conservation of biodiversity. It is this enormous group of people who can successfully face the future challenges of biodiversity conservation.



## REFERENCES

- Aarts, N. (1998) Een kwestie van natuur. Een studie naar de aard en het verloop van communicatie over natuur en natuurbeluid. Wageningen Universiteit, Wageningen.
- Adger, W.N., Brown, K., Fairbrass, J., Jorden, A., Paavola, J., Rosendo, S. & Seyfang, G. (2003). Governance for sustainability: towards a 'thick' analysis of environmental decision-making. *Environment and Planning A*. 35: 1095-1110.
- Algemene Rekenkamer (2007) Bescherming van natuurgebieden. Algemene Rekenkamer, Den Haag.
- Allmendinger, P. (2001) Planning in postmodern times. Routledge, London.
- Allmendinger, P. (2002) Planning Theory. Palgrave, Basingstoke.
- Alphandéry, P. & A. Fortier (2001) Can a Territorial Policy be Based on Science Alone? The System for Creating the Natura 2000 Network in France. *Sociologia Ruralis* 41 (3): 311-328.
- Barnes, P.M. & I.G. Barnes (1999) Environmental Policy in the European Union. Edward Elgar, Cheltenham.
- Barnes, T.J. & J.S. Duncan (eds.) (1992) Writing Worlds. Discourse, text and metaphor in the representation of landscape. Routledge, London.
- Barrett, S.M. (2004) Implementation studies: time for a revival? Personal reflections on 20 years of implementation studies. *Public Administration* 82 (2): 249 – 262.
- Bennet, G. & S. Ligthart (2001) The implementation of international nature conservation agreements in Europe: the case of the Netherlands. *European Environment* 11 (3): 140-150
- Bevir, M. (2004) Governance and interpretation: what are the implications of postfoundationalism? *Public Administration* 82 (3): 605-625.
- BirdLife International (2004) State of the world's birds 2004: indicators for our changing world. BirdLife International, Cambridge.
- Bos, F., M. Bosveld, D. Groenendijk, C. van Swaay, I. Wynhoff, De Vlinderstichting (2006) De dagvlinders van Nederland, verspreiding en bescherming (Lepidoptera: Hesperioidea, Papilionoidea). Nederlandse Fauna 7. Nationaal Natuurhistorisch Museum Naturalis, KNNV Uitgeverij & European Invertebrate Survey Nederland, Leiden.
- Bouwma, I.M., J.A.M. Janssen, S.M. Hennekens, H. Kuipers, M.P.C.P. Paulissen, C.M. Niemeijer, M.F. Wallis de Vries, R. Pouwels, M.E. Sanders, M.J. Epe (2009) Realisatie landelijke doelen Vogel- en Habitatrichtlijn. Een onderzoek naar de noodzaak voor aanvullende beleidsmaatregelen ter realisatie van de landelijke doelen van de Vogel- en Habitatrichtlijn. Alterra, Wageningen.
- Brooks, T. M., R.A. Mittermeier, C.G. Mittermeier, G.A.B Da Fonseca, A.B. Rylands, W.R. Konstant, P. Flick J. Pilgrim, S. Oldfield, G. Magin, C. Hilton-Taylor (2002) Habitat Loss and Extinction in the Hotspots of Biodiversity. *Conservation Biology* 16 (4): 909–923.
- CEC (2006) Halting the loss of biodiversity by 2010 and beyond. Sustaining ecosystem services for human well-being. Communication from the Commission. Com (2006) 216 Final. Brussels.
- Clarke, J. & J. Newman (1997) The managerial state : power, politics and ideology in the remaking of social welfare. Sage, London.

- Coffey, C. & Richartz, S. (2003) The EU Habitats Directive: Generating Strong Responses. Project Deliverable N. D 17. Institute for European Environmental Policy, London.
- Cowell, R. & S. Owens (2006) Governing space: planning reform and the politics of sustainability. *Environment and Planning C: Government and Policy* 24 (3): 403-421.
- De Roo, G. (1999) Planning per se, planning per saldo : over conflicten, complexiteit en besluitvorming in de milieuplanning. Sdu Uitgevers, Den Haag.
- Descola, P. & G. Palsson, (eds.) (1996) *Nature and society : anthropological perspectives*. Routledge, London.
- Doevendans, K. Lörzing, H. & Schram, A. (2007) From Modernist Landscapes to New Nature: Planning of Rural Utopias in The Netherlands. *Landscape Research* 32 (3): 333-354.
- Donald, P. F., F. J. Sanderson, I. J. Burfield, S. M. Bierman, R. D. Gregory, and Z. Waliczky. 2007. International conservation policy delivers benefits for birds in Europe. *Science* 317: 810–813.
- Dryzek, J. (2000) *Deliberative democracy and beyond*. Oxford University Press, Oxford.
- Ducros, C. & N.M. Watson (2002) Integrated Land and Water Management in the United Kingdom: Narrowing the Implementation Gap. *Journal of Environmental Planning and Management* 45 (3): 403–423.
- Ducros, C. & Watson, N.M. (2002) Integrated Land and Water Management in the United Kingdom: Narrowing the Implementation Gap. *Journal of Environmental Planning and Management* 45 (3): 403-423.
- Duineveld, M. (2006) Van oude dingen, de mensen, die voorbij gaan... : over de voorwaarden meer recht te kunnen doen aan de door burgers gewaardeerde cultuurhistories. Wageningen Universiteit, Wageningen.
- Duineveld, M., R. Beunen, R.G.H. Van Ark, K.A.M. Van Assche, & R. During (2007) The difference between knowing the path and walking the path: een essay over het terugkerend maakbaarheidsdenken in beleidsonderzoek. Wageningen Universiteit, Leerstoelgroep Sociaal-ruimtelijke Analyse, Wageningen.
- EEA (2008) Europe is losing biodiversity — even in protected areas. European Environment Agency. <http://www.eea.europa.eu/highlights/europe-is-losing-biodiversity-2013-even-in-protected-areas>. (18-3-2009).
- Ellis, R. & C. Waterton (2005) Caught between the cartographic and the ethnographic imagination: the whereabouts of amateurs, professionals, and nature in knowing biodiversity. *Environment and Planning D: Society and Space* 23 (5): 673-693.
- Escobar, A. (1998) Whose Knowledge, Whose Natura? Biodiversity, Conservation, and the Political Ecology of Social Movements. *Journal of Political Ecology* 5 (1): 53-82.
- European Council (2001) Presidency Conclusions 15 and 16 June 2001, Göteborg. [http://ec.europa.eu/governance/impact/background/docs/goteborg\\_concl\\_en.pdf](http://ec.europa.eu/governance/impact/background/docs/goteborg_concl_en.pdf) (1-09-2009).
- Fahrig, L. (1997) Relative Effects of Habitat Loss and Fragmentation on Population Extinction. *The Journal of Wildlife Management* 61 (3): 603-610.
- Fischer, F. (1990) *Technocracy and the Politics of Expertise*. Sage Publications, Newbury Park.

- Fischer, F. (2000) *Citizens, experts and the environment: The politics of local knowledge*. Duke University Press, London.
- Fischer, F. (2003) *Reframing public policy: discursive politics and deliberative practices*. Oxford University Press, Oxford.
- Flyvbjerg, B. & T. Richardson (2002) Planning and Foucault. In search of the Dark Side of Planning Theory. In Allmendinger, P., & Tewdwr-Jones, M., (eds.), 2002. *Planning Futures: New Directions for Planning Theory*. Routledge, London.
- Flyvbjerg, B. (1998) *Rationality and power: democracy in practice*. University of Chicago Press, London.
- Forman, R.T.T., D. Sperling, J.A. Bissonette, A.P. Clevenger, C.D. Chutshall & V.H. Dale (2003) *Road Ecology. Science and Solutions*. Island Press, Washington.
- Foucault, M. (1994) *Power. Essential works of Foucault 1954-1984. Volume 3*. The New Press, New York.
- Foucault, M. (1997) *Ethics: subjectivity and truth; the essential works of Michael Foucault, 1954-1984*. Allen Lane: London.
- Foucault, M. (1998) *The will to knowledge. The history of sexuality: 1*. Penguin Books, London.
- Foucault, M. (2003) *Society must be defended. Lectures at the College de France, 1975-1976*. Picador, New York.
- Frissen, P.H.A. (1996) *De virtuele staat. Politiek, bestuur, technologie: een postmodern verhaal*. Academic Service, Schoonhoven.
- Frissen, P.H.A. (2007) *De staat van verschil. Een kritiek van de gelijkheid*. Van Genneep, Amsterdam.
- Glacken, C.J. 1976. *Traces on the Rhodian shore : nature and culture in Western thought from ancient times to the end of the 18th century*. University of California Press, Berkely.
- Gómez-Limón, J. A., Arriaza, M., & J. Berbel (2002) Conflicting implementation of agricultural and water policies in irrigated areas in the EU. *Journal of Agricultural Economics* 53 (2): 259-281
- Goodwin, P. (1998) 'Hired hands' or 'local voice': understandings and experience of local participation in conservation. *Transactions of the Institute of British Geographers* 23 (4): 481-499.
- Grimeaud, D. (2004) The EC Water Framework Directive – An instrument for integrating water policy. *Review of European Community and International Law* 13 (1): 27-39
- Groote, P., T. Haartsen & F. Van Soest (2006) *Tijdschrift voor Economische en Sociale Geografie* 97 (3): 314-320.
- Hajer, M. & W. Zonneveld (2000) Spatial Planning in the Network Society – Rethinking the Principles of Planning in the Netherlands. *European Planning Studies* 8 (3): 337-355.
- Hajer, M., & Wagenaar, H. (Eds.) (2003) *Deliberative policy analysis: understanding governance in the network society*. Cambridge University Press, Cambridge.
- Hajer, M.A. (1995) *The politics of Environmental Discourse: Ecological Modernization and the Policy Process*. Oxford University Press, Oxford.

- Hajer, M.A. (2003) Policy without polity? Policy analysis and the institutional void. *Policy Sciences* 36 (2): 175-195.
- Hajer, M.A. (2006) The Living Institutions of the EU: Analysing Governance as Performance. *Perspectives on European Politics and Society* 7 (1): 41-55.
- Hanski, I. (2005) The shrinking world: Ecological consequences of habitat loss. International Ecology Institute, Olderdorf-Luhe.
- Healey, P. (1997) Collaborative planning : shaping places in fragmented societies. MacMillan, Hampshire.
- Herrnstein-Smith, B. (2005) Scandalous Knowledge. Science, Truth and the Human. Edinburgh University Press Ltd., Edinburgh.
- Hill, M. & P. Hupe (2002) Implementing public policy. Governance in Theory and in Practice. Sage, London.
- Hill, M. & P. Hupe (2009) Implementing public policy. Second Edition. Sage, London.
- Hill, M., (1997) Implementation theory. Yesterday's issue. *Policy and Politics* 25 (4): 375– 385.
- Hillier, J. (2002) Shadows of power: an allegory of prudence in land-use planning. Routledge, London.
- Hornborg, A. (1996) Ecology as semiotics: outlines of a contextualist paradigm for human ecology. In Descola, P. & G. Palsson, (eds.) *Nature and society : anthropological perspectives*. Routledge, London: 45–62.
- IUCN (2008) Numbers of threatened species by major groups of organisms (1996–2008). [http://www.iucnredlist.org/documents/2008RL\\_stats\\_table\\_1\\_v1223294385.pdf](http://www.iucnredlist.org/documents/2008RL_stats_table_1_v1223294385.pdf). (31-8-2009)
- Jacobs, J. (1961) The death and life of great American cities. Penguin, Harmondsworth.
- Janssens, J. & J. Van Tatenhove (2000) Green Planning: From Sectoral to Integrative Planning Arrangements. In: J. Tatenhove, B. Arts, and P. Leroy (Editors), *Political Modernisation and the Environment. The Renewal of Environmental Policy Arrangements*. Kluwer Academic Publishers, Dordrecht: 145-174.
- Jenkins, M. (2003) Prospects for Biodiversity. *Science* 302: 1175-1777.
- Jones, P.J.S. & J. Burgess (2005) Building partnership capacity for the collaborative management of marine protected areas in the UK: A preliminary analysis. *Journal of Environmental Management* 77 (3): 227-243.
- Jordan, A. (1999) The implementation of EU environmental policy: a policy problem without a political solution? *Environment and Planning C: Government and Policy* 17 (1): 69-90.
- Jordan, A., R.K.W. Wurzel & A. Zito (2005) The Rise of 'New' Policy Instruments in Comparative Perspective: Has Governance Eclipsed Government? *Political Studies* 53 (3): 477-496.
- Kadefors, A. (2004) Trust in project relationships – inside the black box. *International Journal of Project Management* 22 (3): 175-182.
- Knill, C. Lenschow A. (eds.), 2000. *Implementing EU Environmental Policy: New Directions and Old Problems*. Manchester University Press, Manchester.

- Langevelde, F. van; Dooremalen, C. van; Jaarsma, C.F. (2009) Traffic mortality and the role of minor roads. *Journal of Environmental Management* 90 (1): 660 - 667.
- Latour, B. (1993) *We have never been modern*. Harvester Wheatsheaf, New York.
- Latour, B. (1996) *Pandora's hope : essays on the reality of science studies*, Harvard University Press, Cambridge.
- Latour, B. (2004) *Politics of nature. How to bring the sciences into democracy?* Harvard University Press, Cambridge.
- Loreau M, A. Oteng-Yeboah, M.T.K. Arroyo, D. Babin, R. Barbault, M. Donoghue, M. Gadgil, C. Häuser, C. Heip, A. Larigauderie, K. Ma, G. Mace, H.A. Mooney, C. Perrings, P. Raven, J. Sarukhan, P. Schei, R.J. Scholes, R.T. Watson (2006) Diversity without representation. *Nature* 442: 245-246
- Loughlin, M. (2002) On the buzzword approach to policy formation. *Journal of Evaluation in Clinical Practice* 8 (2): 229-242.
- Luhmann, N. (2000) Familiarity, confidence, trust: Problems and Alternatives. In: Gambetta, D. (eds.) *Trust: Making and Breaking Cooperative Relations*, electronic edition, Department of Sociology, University of Oxford: 94-107.
- Machiavelli, N. (1988) *The prince*. Cambridge University Press, Cambridge.
- Majone, G. & A. Wildavsky (1979) Implementation as Evolution. In: J. Pressman and A. Wildavsky (eds.) *Implementation*, 3rd ed. University of California Press, Berkeley: 163-180.
- Malachowski, A.R. (1990) *Reading Rorty : critical responses to philosophy and the mirror of nature (and beyond)*. Blackwell, Oxford.
- Maturana, H.R. & F.J. Varela (1987) *The Tree of Knowledge. The Biological Roots of Human Understanding*. Shambhala Publications, Boston.
- Metz, T. (1998) *Nieuwe natuur : reportages over veranderend landschap*. Ambo, Amsterdam
- Middelkamp, A., M.J. Schol, & H.B. Winter (2007) *Programmatisch Handhaven van Natuurwetgeving. Handhavingsanalyse. Pro Facto B.V. Rijksuniversiteit Groningen, Groningen*.
- Milieu- en natuurplanbureau, 2006. *Natuurbalans 2006*. Natuur en Milieu Planbureau, Bilthoven.
- Myers, N., R.A. Mittermeier, C.G. Mittermeier, G.A.B. Da Fonseca, & J. Kent, (2000) Biodiversity hotspots for conservation priorities. *Nature* 403: 853–858.
- Nederlandse Vereniging voor Libellenstudie (2002) *De Nederlandse Libellen (Odonata)*. Nederlandse Fauna 4. Nationaal Natuurhistorisch Museum Naturalis, KNNV Uitgeverij & European Invertebrate Survey-Nederland, Leiden.
- Notenboom, J., M. Van Veen & L.G. Wesselink (2006) *Halting the loss of biodiversity in the Netherlands*. MNP report 500094001. Netherlands Environmental Assessment Agency, Bilthoven.
- Osterman, O.P. (1998) The need for management of nature conservation sites designated under Natura 2000. *Journal of Applied Ecology* 35 (6): 968-973.
- PBL (2008) *Natuurbalans 2008*. Plan Bureau voor de Leefomgeving, Bilthoven.

- Peters, B.G. (2005) The Problem of Policy Problems. *Journal of Comparative Policy Analysis: Research and Practice*, 7(4): 349 – 370.
- Pierre, J. (2000) *Debating governance, authority, steering, and democracy*. Oxford university press. Oxford.
- Pierre, J., & B.G. Peters (2000) *Governance, politics, and the state*. Macmillan, Basingstoke.
- Pimm, S.L., G.J. Russell, J.L. Gittleman, T.M. & Brooks (1995) The future of biodiversity. *Science* 269: 347-350.
- Pressman, J.L. & A.B. Wildavsky (1979) *Implementation: how great expectations in Washington are dashed in Oakland : or, Why it's amazing that Federal programs work at all, this being a saga of the Economic Development Administration as told by two sympathetic observers who seek to build morals on a foundation of ruined hopes* (2d ed.). University of California Press, Berkeley.
- Reid, C.T. (1997) *Nature Conservation Law*. In Holder, J. (eds.) *The impact of EC Environmental Law in the United Kingdom*. John Wiley & Sons Inc, Chichester.
- Rhodes, R.A.W. (1997) *Understanding Governance. Policy networks, governance, reflexivity and accountability*. Open University Press, Buckingham.
- Rhodes, R.A.W. (1997) *Understanding governance: policy networks, governance, reflexivity and accountability*. Open University Press, Buckingham.
- Rientjes, S. (2002) *Making Nature Conservation Modern: An Analysis of Developments in Nature Conservation Policy in Relation to Macro-social Changes – The Netherlands as a Case Study*. *Journal of Environmental Policy & Planning* 4 (1): 1-21.
- Ringeling, A. (2002) *An instrument is not a tool*. Paper presented at the Paper presented at Conference on Policy Instruments, September 26-27, 2002. McGill School of Law, Montreal.
- Rootes, C. (2007) *Nature protection organizations in England*. Centre for the Study of Social and Political Movements, Working paper 1/2007. University of Kent, Canterbury.
- Rorty, R. (1989) *Contingency, irony, and solidarity*. Cambridge University Press, Cambridge.
- Rydin, Y. & M. Pennington (2000) Public Participation and Local Environmental Planning: the collective action problem and the potential of social capital. *Local Environment* 5 (2): 153-169.
- Scott, J.C. (1998) *Seeing like a state: how certain schemes to improve the human condition have failed*. Yale University Press, New Haven.
- Secretariat of the Convention on Biological Diversity (2006) *Global Biodiversity Outlook 2*. Montreal.
- SOVON Vogelonderzoek Nederland (2002) *Atlas van de Nederlandse Broedvogels 1998-2000*. Nederlandse Fauna 5. Nationaal Natuurhistorisch Museum Naturalis, KNNV Uitgeverij & European Invertebrate Survey-Nederland, Leiden.
- Spyropoulou, R. (2008) *The 2007 Assessment of Conservation Status of Species and habitats of European interest :Can restoration help?* Presentation delivered in the Restoration Conference, Ghent 2008 [http://biodiversity-chm.eea.europa.eu/information/biodiversity-resources-eea-dataservice/SER-\\_keynote\\_Spyropoulou2.pptx](http://biodiversity-chm.eea.europa.eu/information/biodiversity-resources-eea-dataservice/SER-_keynote_Spyropoulou2.pptx) (18-3-2009).

- Temple, H.J. & A. Terry (eds.) (2007) *The Status and Distribution of European Mammals*. Office for Official Publications of the European Communities, Luxembourg.
- Van Ark, R.G.H. (2005). *Planning, contract en commitment: naar een relationeel perspectief op gebiedscontracten in de ruimtelijke planning*. Delft: Eburon.
- Van Assche, K. (2004) *Signs in time. An interpretive account of urban planning and design, the people and their histories*. Wageningen: Wageningen University.
- Van Assche, K.A.M. (2006) *Over goede bedoelingen en hun schadelijke bijwerkingen. Essay over Flexibiliteit, Ruimtelijke Ordening en Systeemtheorie*. Innovatienetwerk, Utrecht.
- Van Assche, K.A.M. (2007) *Planning as/and/in context: towards a new analysis of context in interactive planning*. METU Journal of the Faculty of Architecture 24 (2): 105-117.
- Van Assche, K., J. Salukvadze & N. Shavishvili (eds.) (2009) *Urban cultures, urban futures. City planning and city culture in Georgia*. Lewiston, New York.
- Van den Hove, S. (2007) *A rationale for science-policy interfaces*. Futures 39 (7): 807-826.
- Van der Heijden, H.A. (2005) *Ecological Restoration, Environmentalism and the Dutch Politics of 'New Nature'*.
- Van der Heijden, H.A. (2005) *Ecological Restoration, Environmentalism and the Dutch Politics of 'New Nature'*. Environmental Values 14 (4): 427-446.
- Van der Windt H. (1995) *En dan: wat is natuur nog in dit land? Natuurbescherming in Nederland 1880-1990*. Boom, Amsterdam.
- Van Gunsteren, H.R. (1976) *The quest for control: a critique of the rational-central-rule approach in public affairs*. Wiley, London.
- Van Loon, A., M. Coesel & J. Luiten van Zanden (1996) *De eeuw van Thijsse: 100 jaar natuurbeleving en natuurbescherming*. Heimans en Thijsse Stichting, Amsterdam.
- White, I. & J. Howe (2003) *Policy and Practice. Planning and the European Union Water Framework Directive*. Journal of Environmental Planning and Management 46 (4): 621-631.
- Wildavsky, A. (1979) *Speaking Truth to Power: The Art and Craft of Policy Analysis*. Little, Brown and Co., Boston.
- Wissink, B. (2000) *Ontworpen en ontstaan: een praktijktheoretische analyse van het debat over het provinciale omgevingsbeleid*. Sdu Uitgevers, Den Haag.
- Yanow, D. (1993) *The communication of policy meaning. Implementation as interpretation and text*. Policy Science 26 (1): 41-61.
- Yanow, D. (1996) *How does a policy mean? Interpreting policy and organizational actions*. Georgetown University Press, Washington.
- Young, J., A. Watt, P. Nowicki, D. Alard, J. Clitherow, K. Henle, R. Johnson, E. Laczko, D. McCracken, S. Matouch, J. Niemela & C. Richards (2005) *Towards sustainable land use: identifying and managing the conflicts between human activities and biodiversity conservation in Europe*. Biodiversity and Conservation 14 (7): 1641-1661.





# Summary





## Summary

Global biodiversity is under threat, and more and more species are facing extinction. Governments at different policy levels all over the world have formulated policies and legislation to protect flora and fauna. Despite all these national and international efforts and their successes, biodiversity remains threatened. The red list of threatened species has grown, and the populations of the most endangered species continue to decline. The problematic implementation of nature conservation policies, the difficult enforcement of conservation laws, and the growing opposition against these laws and policies have resulted in an urgent need for a debate about the effectiveness and efficiency of national and international nature conservation policies.

This research project aims to provide a better understanding of the implementation of nature conservation policies and the relationship between these nature conservation policies and planning practices. The objective of this research project is to analyse how nature conservation policies affect planning and decision-making processes and their outcomes and to reflect on the implementation of nature conservation policies in the Netherlands. This book combines theoretical and empirical reflections on the implementation of these policies. These reflections will be used to provide realistic recommendations for the people who design, implement and use nature conservation policies.

This book comprises six articles that all deal with the implementation of nature conservation policies. The articles present various empirical studies on the implementation of nature conservation laws, spatial concepts, management plans and on the organisation of the planning and decision-making processes. These empirical studies were used for theoretical reflections on the divergence and convergence of policy meanings and on the relationship between laws and land use.

The thesis started with an empirical study towards the implementation of the Birds and Habitats Directives in different planning and decision-making practices in the Netherlands (chapter 2). This study showed that the implementation of the Birds and Habitats Directives in the Netherlands took a long time, faced several hiccups and led to many discussions and conflicts. The study showed that nature conservation legislation has gained importance in decision-making processes, but that this does not automatically mean that nature conservation goals have been achieved. Due to the emphasis that is placed on the procedural aspects of decision making, the costs involved have increased, while the substantial goals of the European Birds and Habitats Directive are fading into the background.

The empirical study was used to reflect on the implementation of European directives from a theoretical perspective. In chapter 3 we present implementation as a process of evolution in which policy meanings diverge. This elaboration shows that, even though the

European policies lead to a certain formal convergence of policies on a national level, divergence is inevitable when these policies are implemented at the local and regional levels. These local and regional planning and decision-making practices are therewith central to the understanding of the outcomes of European policies.

The empirical study towards the implementation of the Birds and Habitats Directives in the Netherlands was also used to reflect on the relation between laws and land use. For this reflection the experiences with the Birds and Habitats Directive were compared with experiences from the implementation of two other laws, the Pre-emption Right Act and Zoning Plan Exemptions. The elaboration on the relations between laws and land use that is presented in chapter 4 shows that the implementation of laws is complex because laws need to be interpreted and applied in specific cases by people. Each actor interprets and uses the law differently. People struggle about the meaning of a law in general and about the meaning of a law for a specific case. Struggles about space and struggles about the implications of a law are interrelated: when the law demands too much sacrifice, not only the sacrifice but the concept of legal regulation at large becomes disputed. We plea for a sociological perspective on laws in order to understand the relationships between laws, people and land use.

Similar conclusions are presented in chapter 5 in which we elaborated on the relationship between spatial concepts and land use. In a case study towards the use of the concept of Ecological Networks we found that the concept is widely used in plans and policies, but that this leads to an ambiguity of meanings. The implementation of the concept is a struggle that can lead to many different ideas about ecological corridors and to spatial effects that can be very different from the ideas the policy formulators had in mind. The use of spatial concepts in planning and policy has advantages as well as disadvantages. Concepts can be useful for promoting ideas and uniting people. However, the use of a concept can also lead to misleading consensus and hidden responsibilities which might frustrate the implementation process.

With these notions about the implementation of nature conservation policies in mind we have focused on the planning practices in which is decided on the management of protected areas (chapter six). We focused on the Natura 2000 sites that are designated under the Birds and Habitats Directives. The management of Natura 2000 sites faces several challenges. Responsible authorities need to achieve specific conservation objectives and they need to balance these objectives with social and economic interests. The planning and management of Natura 2000 sites and the ways in which ecological objectives are related to social and economic activities will, in the long term, determine the success of European nature conservation policies.

The Dutch national government has obligated the formulation of management plans to provide clarity about the consequences of designation as a Natura 2000 site for

landowners and users in and near these sites. Our study towards the formulation of these plans shows that in their quest for certainty the authorities caused a lot of uncertainty among the various stakeholders that are involved in the decision-making processes about Natura 2000 sites. This study shows that the uncertainties that come along with the designation of a Natura 2000 site largely influenced the planning processes and the discussions about the relationships between biodiversity conservation and social and economical activities. Not only were stakeholders uncertain about the consequences of Natura 2000, but also about the planning processes and their possibilities to participate and influence the outcomes of these processes. Due to these uncertainties many of them are very sceptical about the management plans. The most positive results are found in the projects where the authorities invested time and effort in the organisation of the participation of various stakeholders, in communication and in shared-knowledge-finding. During the planning process the tensions about Natura 2000 should be addressed and the responsible authorities should communicate with various stakeholders and try to achieve mutual understanding of each others perspective and interest.

Next to this general study towards the formulation of management plans for Natura 2000 sites in the Netherlands we made a detailed study of the planning processes at two Natura 2000 sites in the Netherlands and in the United Kingdom (chapter seven). We studied how the responsible authorities organised the planning and decision-making processes, and how they involved other parties in these processes. This study shows that different planning and management approaches can be used and that these approaches affect the ecological and social success of the planning process. The comparison between the two cases shows that a planning process in which much emphasis is put on cooperation and creating mutual trust seems to offer better possibilities than a more formal and hierarchical governance style.

In the synthesis of this thesis the different findings and conclusions are combined and used to reflect on the implementation of nature conservation policies in the Netherlands and to offer some recommendations for planning practices and research (chapter 8). In this thesis we have shown that and how formal policies and their use in planning practices are diverging. Not the overall aim of a policy, but the specific targets of a policy become the objective of people's actions and decisions due to the emphasis that is put on procedural requirements of conservation policies. This leads to conformance to a policy rather than commitment to this policy. The quality of the natural environment therewith gets lost in long-lasting procedures and conflicts over plans and projects. The emphasis on conformance has resulted in a lack of attention to the dynamics of organisational processes. The fact that all kinds of reports are written to support decisions but not to contribute to deliberate decision-making, is both a consequence and a cause of the shift in focus to the procedural aspects of conservation policies. The

growing emphasis on procedural aspects is a self-reinforcing process, and although it does not contribute by definition to improved protection of biodiversity, it is difficult to change current practices and trends.

In many situation the conservation objectives have been dashed in planning practices in which social and economical interests prevail. The policies no longer promote discussions about different land use activities and their relationships, but have caused a procedural struggle between people who pursue special interests. We therefore question the efficiency and legitimacy of all these procedures and their implications for decision-making practices. Many people, including those who commission, write and assess these reports, have complained about these developments. However, there appears to be a general ignorance towards this subject.

The findings of this study are not limited to the implementation of the Birds and Habitats Directives. The implementation of various other environmental and land use policies faced similar problems. All these policies have one thing in common: they generate a lot of work for initiators of plans and projects, consultancies, advisors, and authorities. The formal procedures take a long time and many people are needed to write the required environmental assessments and legal reports. Our insights and recommendations are therefore useful for many other policy domains with a spatial dimension.

Finally we present some recommendations that can help to achieve policy objectives. Our first recommendation is to take another perspective upon policy implementation. Policy implementation is not an objective, but a means to achieve specific goals for which the policy was created. The problem of many means, however, is that they become ends in the long run. Implementation is not only about reaching specific outcomes, but also about rethinking the means by which policy objectives can be reached. Much more attention should therefore be given to the process of policy implementation, both in practice and in science. The real effects of policies can only be seen on the long term and reside in their possibilities to initiate and frame discussions and to change the ways people think and act. The Birds and Habitats Directives, for example, can only be successful if they cause people to rethink their decisions and activities that negatively affect species and habitats. We have shown that in the current situation many people criticise the conservation policies, and that the conservation objectives have become obscured. We recommend looking for different strategies and approaches for the implementation of conservation policies like the Birds and Habitats Directives.

Another recommendation is that policy objectives should be placed within a broader perspective. The case study in Thanet Coast, for example, showed that public support for conservation increased after the Natura 2000 objectives were included as part of wider efforts to protect the natural beauty of the chalk coast, such as landscape and the

protection of seals. In many situations there are good possibilities to present conservation objectives in such a way that they can be linked more easily with other perspectives on the organisation and use of the environment. The concept of Ecological Networks, for example, proved to be successful precisely because people could link it to their own perspectives and ideas. To look for these possibilities is one of the most important challenges for responsible authorities.

An important lesson from this research is that the implementation of new policies can only be successful after the responsible authorities call the policy to the attention of people at the grassroots level and after relevant stakeholders are informed about these policies. Authorities should hold discussions with these stakeholders and explain to them what kind of actions are expected from them. The success of nature conservation policies depends on actors knowing about these policies. At the same time we should be aware that 'knowing' is not a guarantee for 'being willing'. Even when people know how to act according to the policy, they can decide to act differently. Currently the emphasis is put on the conflicts that are caused during the implementation of conservation policies. We advice those who support biodiversity policies to communicate about the necessity, benefits and possibilities of this policy and to show that there are also many cases in which the conservation laws are applied without problems and with positive results.

Conservation policies are certainly an important means to protect biodiversity, but the real efforts have to come from people who take action and make decisions. Conservation policies can help to create more awareness, support and possibilities for biodiversity conservation, but the implementation of these policies can also result in a growing ignorance, opposition, and a waste of time and money. It is therefore necessary - more than ever - to study the implementation of these policies and the actions and decisions of people who are in various ways involved in biodiversity conservation. The insights from these studies help us to design more realistic policies and plans and to improve the chances for a successful implementation.





# Samenvatting





## **Samenvatting**

Wereldwijd wordt een groeiend aantal soorten planten en dieren bedreigd met uitsterven en in vele gebieden gaat de biodiversiteit achteruit. Om dit tegen te gaan hebben vele overheden beleid en wetgeving geformuleerd om flora en fauna te beschermen. Ondanks al deze nationale en internationale inspanningen en de successen die zijn behaald, blijft biodiversiteit echter bedreigd. In Nederland bijvoorbeeld is het areaal aan de natuurgebieden de laatste jaren weliswaar toegenomen, maar de kwaliteit van deze gebieden is onvoldoende om verder verlies van biodiversiteit te voorkomen. De rode lijst van bedreigde soorten is langer geworden en de populaties van de meest bedreigde soorten blijven afnemen. De problematische implementatie van natuurbeleid, de moeizame handhaving van de natuurbeschermingswetten, en de groeiende weerstand tegen deze wetten zijn belangrijke redenen voor een debat over de effectiviteit en de efficiëntie van het nationale en internationale natuurbeschermingsbeleid.

Het doel van dit onderzoek is om meer inzicht te geven in de implementatie van natuurbeleid en in de relatie tussen natuurbehoud en planningspraktijken. Dit boek combineert theoretische en empirische uitwerkingen over de implementatie van dit beleid. Op basis hiervan worden realistische aanbevelingen gegeven aan de mensen die natuurbeleid formuleren, implementeren en gebruiken.

Dit boek bevat zes wetenschappelijke artikelen over de implementatie van het nationale en internationale natuurbeleid in Nederland. De artikelen beschrijven verschillende empirische studies naar de implementatie van natuurbeschermingswetten, ruimtelijke concepten, beheerplannen voor Natura 2000 gebieden en naar de organisatie van de plannings- en besluitvormingsprocessen over beschermde natuurgebieden.

Het eerste artikel, in hoofdstuk twee, beschrijft een empirische studie naar de implementatie van de Vogel- en Habitatrichtlijn in de verschillende plannings- en besluitvormingspraktijken in Nederland. Deze studie laat zien dat de implementatie van de Vogel- en Habitatrichtlijn in Nederland moeizaam is verlopen en tot veel discussies en conflicten heeft geleid. De studie laat ook zien dat de wetgeving inzake natuurbehoud steeds belangrijker is geworden in de besluitvorming, maar dat dit niet automatisch betekent dat natuurdoelen worden bereikt. Vanwege de nadruk die wordt gelegd op de procedurele aspecten van de besluitvorming, zijn de kosten van besluitvorming gestegen, terwijl de doelen van het natuurbeleid op de achtergrond zijn geraakt.

Deze empirische studie is gebruikt om vanuit een theoretisch perspectief te reflecteren op de implementatie van Europese richtlijnen. In hoofdstuk drie wordt de implementatie gepresenteerd als een evolutionair proces waarin de betekenissen van het natuurbeleid steeds meer uiteen gaan lopen. Hieruit blijkt dat nationaal beleid van verschillende lidstaten als gevolg van Europees beleid weliswaar steeds meer op elkaar

gaat lijken, maar dat er grote verschillen zijn in de implementatie van dit beleid op lokaal en regionaal niveau. Deze lokale en regionale plannings- en besluitvormingspraktijken zijn daarmee essentieel om een goed begrip te krijgen van de resultaten van het Europese beleid.

De empirische studie naar de implementatie van de Vogel- en Habitatrichtlijn in Nederland is ook gebruikt om te reflecteren op de relatie tussen wetten en landgebruik. Voor deze reflectie zijn de ervaringen met de Vogel- en Habitatrichtlijn vergeleken met de ervaringen met twee andere wetten, De wet voorkeursrecht gemeenten en Artikel 19 van wet op de ruimtelijke ordening. In hoofdstuk vier laten we zien dat de implementatie van wetgeving veel complexer is dan vaak wordt verondersteld. Dit komt omdat wetgeving door mensen in een specifieke context moet worden geïnterpreteerd en toegepast. Iedereen interpreteert en gebruikt de wet anders. Mensen strijden over de betekenis van een wet in het algemeen en over de betekenis van een wet voor een specifiek geval. De strijd over de ruimte en de strijd over de betekenis van een wet zijn verweven. Wetten worden dan ook strategisch toegepast of genegeerd in de strijd om de ruimte. Het is daardoor moeilijk te bepalen wat een wet concreet voor gevolgen heeft gehad. Het is vooral lastig om inzicht te krijgen in de onbedoelde en indirecte effecten op actoren of waarden die niet de tot de primaire focus van de wet behoren. Wij houden daarom een pleidooi voor een perspectief op wetten waarbij de nadruk ligt op de mensen die deze wetten interpreteren, toepassen of negeren.

Vergelijkbare conclusies worden gepresenteerd in hoofdstuk vijf, waarin we ingaan op de relatie tussen ruimtelijke concepten en landgebruik. Op basis van een case studie naar het gebruik van het concept ecologische netwerken concluderen we dat het concept op grote schaal wordt gebruikt in de plannen en beleid, maar dat dit leidt tot een veelheid van betekenissen. Er zijn veel verschillende ideeën over ecologische netwerken en als gevolg daarvan kunnen de ruimtelijke effecten van het beleid afwijken van de ideeën die de beleidsmakers in gedachten hadden toen ze het concept in het beleid introduceerden. Het gebruik van een ruimtelijke concept in planning en beleid heeft voordelen maar ook nadelen. Concepten kunnen nuttig zijn voor het uitdragen en samenbrengen van ideeën, maar tegelijkertijd kan het gebruik van een concept ook zorgen voor misleidende consensus en verborgen verantwoordelijkheden die het implementatieproces kunnen frustreren.

Met deze inzichten over de implementatie van het natuurbeleid hebben we verder onderzoek gedaan naar de planningspraktijken waarin wordt beslist over het beheer van beschermde gebieden (hoofdstuk zes). We hebben ons gericht op de Natura 2000-gebieden die onder de Vogelrichtlijn en de Habitatrichtlijn zijn aangewezen. Het beheer van de Natura 2000-gebieden brengt verschillende uitdagingen met zich mee. Beheerders en betrokken overheden zijn verantwoordelijk voor de realisatie van

specifieke beheersdoelen, maar zij zijn ook verantwoordelijk voor het afstemmen van deze doelen met andere sociale en economische belangen. De wijze waarop in plannings- en besluitvormingsprocessen de verschillende doelen worden afgewogen, bepaalt op lange termijn het succes van het Europese natuurbeleid.

De Nederlandse overheid heeft het opstellen van beheerplannen verplicht gesteld om daarmee duidelijkheid te geven over de consequenties van de aanwijzing als Natura 2000-gebied voor de grondeigenaren en -gebruikers in en nabij deze gebieden. Onze studie toont aan dat in hun zoektocht naar zekerheid de overheid juist meer onzekerheid heeft veroorzaakt onder de verschillende actoren die betrokken zijn bij de discussies en de besluitvorming over Natura 2000-gebieden. Het opstellen van de beheerplannen heeft bij allerlei partijen geleid tot extra onzekerheden over de mogelijkheid om in het planproces te participeren en over de mogelijkheid om invloed uit te oefenen op de uitkomsten ervan. Door deze onzekerheden zijn velen van hen sceptisch over de beheerplannen. De meest positieve resultaten zijn gevonden in de projecten waarin de verantwoordelijke overheden tijd en moeite hebben geïnvesteerd in de organisatie van de participatie van diverse belanghebbenden, de communicatie en in het gezamenlijk vinden van oplossingen. Deze projecten laten zien dat intensieve communicatie tussen de verschillende betrokken actoren een essentiële basis vormt voor het oplossen van conflicten. Tegelijkertijd moet worden erkend dat de communicatie met de betrokkenen niet direct de oplossing van alle conflicten is. Het creëert echter wel meer bewustzijn voor de instandhoudingsdoelstellingen en het biedt mogelijkheden om te zoeken naar breder gedragen oplossingen.

Naast de studie naar het opstellen van beheerplannen voor Natura 2000-gebieden in Nederland hebben we ook een gedetailleerde studie uitgevoerd naar de planningsprocessen in twee Natura 2000-gebieden in Nederland en in het Verenigd Koninkrijk (hoofdstuk zeven). Hierbij hebben we onderzocht hoe de verantwoordelijke autoriteiten het plannings- en besluitvormingsprocessen hebben georganiseerd en hoe ze andere partijen bij dit processen betrokken hebben. Deze studie laat zien dat de manier waarop het proces is georganiseerd grote invloed heeft op het ecologische en sociale succes van het proces. Uit onze studie wordt duidelijk dat een planningsproces waarin veel nadruk wordt gelegd op samenwerking en het creëren van wederzijds vertrouwen betere mogelijkheden biedt dan een meer formele en hiërarchische stijl van planning.

In de synthese van dit proefschrift zijn de verschillende bevindingen en conclusies gecombineerd en gebruikt om na te denken over de uitvoering van het natuurbeschermingsbeleid in Nederland en om een aantal aanbevelingen te bieden voor planningspraktijken en onderzoek (hoofdstuk acht). In dit proefschrift wordt geconcludeerd dat en beschreven hoe formeel beleid en de implementatie ervan in

planningspraktijken van elkaar zijn gaan afwijken. Niet de algemene doelen van het beleid, maar de specifieke procedurele vereisten van het beleid zijn centraal komen te staan in het handelen en beslissen van mensen. De ambitie om biodiversiteit te beschermen gaat daarmee verloren in langdurige procedures en conflicten over plannen en projecten. De nadruk op conformiteit heeft geresulteerd in een gebrek aan aandacht voor de dynamiek van organisatorische processen. Het natuurbeschermingsbeleid stimuleert niet langer de discussies over de verschillende activiteiten en hun relaties, maar heeft vooral geleid tot een procedurele strijd tussen mensen die specifieke belangen nastreven. We zetten dan ook vraagtekens bij de effectiviteit, de efficiëntie en de legitimiteit van al deze procedures en de gevolgen daarvan op besluitvormingspraktijken. Veel mensen klagen over deze ontwikkelingen. Het lijkt er echter op alsof vele mensen deze gang van zaken negeren en de discussie hierover wil vermijden. Als gevolg van deze ontwikkelingen verliezen echter steeds meer mensen het vertrouwen in het besluitvormingssysteem en het resultaat is dat biodiversiteit niet goed wordt beschermd.

De bevindingen van deze studie zijn niet beperkt tot de uitvoering van de Vogel- en Habitatrichtlijn. Ook de implementatie van ander milieu- en ruimtelijk beleid heeft te kampen met soortgelijke problemen. Al dit beleid heeft een ding gemeen, het genereert veel werk voor de initiatiefnemers van plannen en projecten, adviseurs, onderzoekers en overheden. De formele procedures duren langer en veel mensen zijn nodig om de vereiste milieueffectrapportages en andere juridisch vereiste rapporten te schrijven. De aanbevelingen uit dit proefschrift zijn dan ook op vele beleidsterreinen van toepassing.

Onze eerste aanbeveling is om vanuit een ander perspectief aan de implementatie van beleid te werken. Beleidsimplementatie is geen doel op zich, maar een middel om specifieke doelen waarvoor het beleid is gemaakt te bereiken. Het probleem van veel middelen is echter dat ze op de lange termijn een doel op zich worden. Beleidsimplementatie gaat niet alleen over het bereiken van specifieke resultaten, maar vooral ook over een heroverweging van de wijze waarop deze beleidsdoelen kunnen worden bereikt. We moeten dan ook meer aandacht geven aan het implementatieproces, zowel in de praktijk als in de wetenschap. De effecten van het beleid worden vaak pas op de lange termijn zichtbaar en liggen vooral in de mogelijkheid om discussies te initiëren en daarmee invloed uit te oefenen op de wijze waarop mensen denken en handelen. De Vogel- en Habitatrichtlijn, bijvoorbeeld, kunnen alleen succesvol zijn als mensen bereid zijn om hun beslissingen en activiteiten die een negatieve invloed hebben op soorten en natuurgebieden te herzien. Die bereidheid ontbreekt in veel gevallen. We hebben laten zien dat in de huidige situatie veel mensen kritiek hebben op het natuurbeleid en dat de inhoudelijke doelen daarvan uit het zicht dreigen te verdwijnen. Wij adviseren dan ook om op zoek te gaan naar andere strategieën en

benaderingen voor de implementatie van dit beleid. Een belangrijke aanbeveling is dat de specifieke natuurdoelen voor een bepaald gebied in een bredere context moeten worden geplaatst. Uit ons onderzoek in de Thanet Coast is gebleken dat het draagvlak voor Natura 2000 doelen is toegenomen nadat die onderdeel zijn geworden van bredere inspanningen om de omgeving en het landschap te beschermen en te ontwikkelen. In veel situaties zijn er goede mogelijkheden om de natuurdoelen te koppelen aan andere perspectieven op de organisatie en het gebruik van de omgeving. Het concept van ecologische netwerken, bijvoorbeeld, bleek succesvol omdat het mensen de ruimte biedt om hun eigen perspectieven en ideeën daarin te integreren. Het zoeken naar deze mogelijkheden is een belangrijke uitdaging voor de verantwoordelijke organisaties.

Een belangrijke les uit dit onderzoek is dat de implementatie van nieuw beleid alleen succesvol kan zijn nadat de verantwoordelijke autoriteiten het beleid onder de aandacht hebben gebracht en relevante belanghebbenden hebben geïnformeerd over dit beleid. Overheden moeten dan ook actief met deze belanghebbenden overleggen en uitleggen wat voor acties van hen worden verwacht. Tegelijkertijd moeten we beseffen dat kennis van het beleid geen garantie is voor de implementatie van dit beleid. Zelfs als mensen weten hoe ze overeenkomstig het beleid moeten handelen, kunnen ze beslissen om dat niet te doen. Momenteel wordt veel nadruk gelegd op de conflicten die worden veroorzaakt tijdens de implementatie van het natuurbeleid. Wij adviseren mensen die het natuurbeleid ondersteunen om te communiceren over de noodzaak, de voordelen en mogelijkheden van dit beleid en te laten zien dat er ook veel gevallen zijn waarin de natuurbeschermingswet zonder problemen en met positieve resultaten wordt uitgevoerd.

Natuurbeschermingsbeleid is een belangrijk middel om biodiversiteit te beschermen, maar de echte inspanningen komen van mensen die beslissingen maken en actie ondernemen. Het beleid kan helpen om meer bewustzijn, meer ondersteuning en meer mogelijkheden te creëren voor behoud van de biodiversiteit, maar de implementatie van dit beleid kan ook resulteren in een groeiende onwetendheid, oppositie en verspilling van tijd en geld. Het is daarom meer dan ooit noodzakelijk om de implementatie van dit beleid en de acties en beslissingen van mensen die op verschillende manieren betrokken zijn bij de instandhouding van de biodiversiteit te bestuderen. De inzichten die dit oplevert, helpen om realistischer beleid te ontwerpen en om de kansen voor een succesvolle implementatie te vergroten.

**Annex to statement****Name R. Beunen****PhD student, Mansholt Graduate School of Social Sciences (MG3S)****Completed Training and Supervision Plan**

Description	Institute / Department	Year	ECTS*
<b>Courses:</b>			
Basis cursus didactiek.	Wageningen University, Docenten Ondersteuning	2007- 2008	2
Afstudeervak organiseren en begeleiden	Wageningen University, Docenten Ondersteuning	2008	1
Gespreksvaardigheden één op één begeleiding	Wageningen University, Docenten Ondersteuning	2009	1
Begeleiden van onderwijsgroepen	Wageningen University, Docenten Ondersteuning	2009	1
Advanced reading in philosophy of science and planning theory	Wageningen University, Land Use Planning Group	2003- 2008	4
Various teaching and supervising activities (Courses, guest-lecturing, and supervising Academic Master Clusters, and BSc and MSc Theses	Wageningen University, Land Use Planning Group	2005- 2009	4
Accreditation of prior learning: discipline- specific education in the field of land-use planning	Mansholt Graduate School of Social Sciences	2005- 2009	14
<b>Presentations at conferences and workshops:</b>			<b>3</b>
Mansholt Multidisciplinary seminar		2009	1
Aesop conference Napels		2007	1
Aesop conference Liverpool		2009	1
<b>Total (minimum 30 ECTS)</b>			<b>30</b>

\*One ECTS on average is equivalent to 28 hours of course work



### About the author

Raoul Beunen was born in 1975 in Boxmeer, the Netherlands. After his study in spatial planning he started to work as a researcher at the Land Use Planning Group. In 2007 he was appointed as assistant professor at the same group. In the period between 2006 and 2009 he combined research and education with his work on this PhD thesis. His main research interest are the governance of nature (in particular the implementation of nature conservation policies in planning practices), grass root planning (local and regional practices of spatial planning, citizen involvement and the integration of planning education and planning practices) and sustainable tourism (visitor surveys and management).

### Selection of scientific articles published in the past years:

- Beunen, R.; Knaap, W.G.M. van der; Biesbroek, G.R. (2009) Implementation and Integration of EU Environmental Directives. Experiences from the Netherlands. *Environmental Policy and Governance* 19 (1). - p. 57 - 69.
- Beunen, R.; Hagens, J.E. (2009) The Use of the Concept of Ecological Networks in Nature Conservation Policies and Planning Practices. *Landscape Research* 34 (5). - p. 563 - 580.
- Dijk, T. van; Beunen, R. (2009) Laws, People and Land Use: A sociological perspective on the relation between laws and land use. *European Planning Studies* 17 (12). - p. 1797 - 1815.
- Vries, J.R. de; Beunen, R. (2009) Planning van Natura 2000-gebieden : vergelijkend onderzoek Nederland-Engeland. *Landschap* 26 (1). - p. 34 - 43.
- Beunen, R.; Regnerus, H.D.; Jaarsma, C.F. (2008) Gateways as a means of visitor management in national parks and protected areas. *Tourism Management* 29 (1). - p. 138 - 145.
- Duineveld, M.; Assche, K.A.M. van; Beunen, R. (2008) Uitgesloten amateurs in het nieuwe landschap van de Nederlandse archeologie. *Vrijetijdstudies* 26 (4). - p. 29 - 39.
- Beunen, R.; Ark, R.G.H. van (2007) De politieke dimensie van Natura 2000. *Landschap* 24 (1). - p. 13 - 20.
- Oosten, H. van; Beunen, R.; Meulengraaf, B. van de; Noort, T. van (2007) White-masked Antbird (*Pithys castaneus*) and Orange-throated Tanager (*Wetmorethraupis sterrhopteron*) at a new location in Amazonas, Peru. *Cotinga* 28 . - p. 79 - 81.
- Regnerus, H.D.; Beunen, R.; Jaarsma, C.F. (2007) Recreational traffic management: the relations between research and implementation. *Transport Policy* 14 (3). - p. 258 - 267.
- Beunen, R. (2006)  
European Nature Conservation Legislation and Spatial Planning: For Better or for Worse? *Journal of Environmental Planning and Management* 49 (4). - p. 605 - 619.
- Beunen, R.; Jaarsma, C.F.; Regnerus, H.D. (2006) Evaluating the effects of parking policy measures in nature areas. *Journal of Transport Geography* 14 (5). - p. 376 - 383.
- Ark, R.G.H. van; Beunen, R. (2002) Natuurlijk combineren! Realisatie van ecologische verbindingszones in het licht van meervoudig ruimtegebruik. *Landschap* 19 (2002) 2. p. 123 - 128.