

Chapter-wise summary of the Flora and Fauna Law

This chapter gives an overview of the F&F Law at this moment (March 2006). Other chapters of this report will use terms originating from this Law, or refer to articles that are explained here. Therefore, this chapter summarizes the F&F Law, divided by the chapters as can be found in the F&F Law itself. It is a summary, which means that not all details are mentioned.

The F&F Law and its add-on's; an AMvB and several Ministerial Regulations, can also be found at www.overheid.nl

Chapter 1, General regulations (art. 1,2)

This chapter contains the definitions of terms used throughout the F&F Law, like 'hunting' ('getting or killing, or with that intention finding game, or trying to do so') and 'eggs' which are for example also egg-shells.

The most relevant part however, is article 2, which describes the general 'duty of care' of every person. It means that an activity that needlessly harms nature is not allowed. With that, the duty of care states the intrinsic value of nature; nature has value of its own, not just the value it has for humans.

Chapter 2, Designation of protected species (art. 3-7)

In this chapter the conditions are described to which a specie should conform before it *can* be declared a protected specie. It describes the conditions for plants (art. 3), animals (art. 4) and exotic species (art. 5). Protection might not apply to all stages of appearance of a specie (art. 6).

Species that are anyhow protected:

- all mammals except the brown rat/Norway rat, the black rat and house mouse
- all European birds
- all native amphibians and reptiles
- a number of fish
- other species that are specified in a Ministerial Regulation¹

Article 7 is the legal basis for the Red Lists. Here is stated that the government should make lists of all indigenous species which are threatened with extinction. The government has to stimulate research and measures needed for their protection.

Chapter 3, General Prohibitory Clauses (art. 8-18)

Article 8 till 12 describe what is prohibited regarding protected animals and plants: it is not allowed to harm them by digging them out, killing them, disturbing them, destroying their nests, picking their eggs, etc. It is also not allowed to trade in them and transport them (art. 13). Article 14 states that it is forbidden to introduce animals or their eggs in nature, except some fish species. Planting or sowing plants that might form a threat for indigenous species is also not allowed, nor is the ownership of such animals and plants as well as transport them, to buy or sell them, to give them away etc. It is illegal to have, to buy or sell, to give away, etc. some (in an AMvB specified) equipment to catch or kill animals. , It is not allowed to be outside a building with some other (in an AMvB specified) equipment enabling catching or killing an animal, when it can be well imagined that it is going to used to catch or kill animals (art. 15). If you don't have a hunting license, you are not allowed to carry (parts of) a gun or to have a ferret or trap with you. And you should always prevent your animal (a dog, for example) from harming other animals.

¹ In the 'Decree Assignment animal and plant species Flora and Fauna Law' (see below)

Chapter 4, Protected habitats (art. 19-28)

The regional authorities can designate a specific location that is of crucial importance for a protected specie as 'protected habitat'. This designation includes a list of activities that might negatively affect the specie, and if the owner/user of the location intends to perform such an activity he has to inform the regional authorities on beforehand (minimum a month). If the regional authorities don't object, the user is allowed to perform the activity, if they do protest he has to act according to the content of the objection. If the owner/user suffers financial damage from this designation, he might be compensated.

Chapter 5, Special regulations (art. 29-82)

This is the largest chapter, covering subjects like the hunt and fauna damage protection. Regional authorities can acknowledge so-called Fauna Management Areas, which are large-scale cooperatives of hunters. Their responsibility is the management of animals and the prevention of damage by animals (art. 29). Activities to do so might directly violate the articles 2 and 8-12. To be allowed to do this, an approved Fauna Management Plan is needed in a number of instances; approved by the regional authorities (art. 30). Hunting, as a sport, is allowed only on 'game'. There are 6 species of game; hare (*Lepus europaeus*), pheasant (*Phasianus colchicus*), partridge (*Perdix perdix*), mallard (*Anas platyrhynchos*), rabbit (*Oryctolagus cuniculus*) and wood pigeon (*Columba palumbus*) (art. 32). The person who has the right to hunt (the owner or the tenant) can let that right to somebody else. The person who is finally allowed to hunt in a particular area is called the 'hunt-keeper'. He is obliged to maintain a reasonable stock of game, or to restore it if necessary (art. 37). Besides of the right to hunt, a hunter needs a hunting permit, which he only gets if he is of the right age, has showed to be able to handle his equipment well, has passed his exam, etc (art. 39). The minister sets the dates of the hunting season, which is somewhere between 16 August and 31 January. It is forbidden to hunt in nature protection areas that are protected by the Nature Protection Law or the Birds Directive (art. 46). There is a specified set of equipment with which the hunter is allowed to hunt, including guns and dogs (art. 50). There is a whole range of situations in which it is not allowed to hunt, ranging from night to graveyards and from hunting out of a flying machine to hunting on birds not capable of flying (art. 53). Article 60 states that if "stakes of nature conservation are not conflicting with it", regional authorities are able to allow cooperatives of meadow-bird protectors to pick plover-eggs, a direct violation of article 12, in the period of 1 of March till the 9 April. People making use of this allowance also have to protect the nests and the birds.

Until now, this F&F-Law seems to be quite straightforward. Plants and animals have an intrinsic value, protected animals and plants should not be harmed, the regional authorities can, if necessary, protect a crucial habitat and hunting is allowed on 6 species only, during the hunting season and if you have the license to do so. However, what to do when geese are eating and trampling a farmer's meadow, or when a forester wants to perform a thinning in a stand where birds might breed? And what if there is a protected specie on your new building-site? In that case you might want to have an exemption to (at least) disturb a protected specie.

Article 65 starts with that. It states that species that cause major damage to agriculture, forestry, etc in the whole country or in parts of the country can be placed on a national or regional list. This is only possible if there is no other satisfactory solution and their 'favorable state of preservation' is not affected. If a specie on such a list inflicts damage, the national or regional authorities are able to allow the user of the area to violate the articles 9-12 to prevent this damage, if there is no other satisfactory solution. When the user is allowed to do so, he is also allowed to pass that right to another person.

Article 67 continues with allowing the regional authorities can appoint people to violate articles 9, 11 & 12 and 50, 51 & 53 when protected species cause a threat to health, traffic, agriculture, forestry and fishery or flora and fauna, if the favorable state of preservation is not

in danger. This allowance can be based on a Fauna Management Plan. Article 68 states that for these reasons, or for other by the regional authorities specifically indicated reasons, the articles 9-18 can be violated. But only if the favorable state of maintenance is not in danger, and always based on a Fauna Management Plan.

If this does not apply, there is article 75, which formulates the general regulations for exemptions. The national authorities can grant an exemption for articles 9-18, 50, 51&53 and some other. Unless a European Regulation overrules, this can only be done if the favorable state of preservation is not threatened. If it concerns species mentioned in the Habitat and Birds Directive, or species on a national list² [1], this is only allowed for:

- education, research or re-population,
- to make it possible to pick, catch or own them in strictly controlled circumstances³ [2],
- or for other interests, specified in an AMvB⁴ [3].

Chapter 6; The Fauna Fund (art. 83-100)

This chapter contains the regulations regarding the Fauna Fund. The tasks of this Fund are to stimulate activities to prevent damage from animals, to compensate damage caused by them when all the necessary steps are taken in trying to prevent damage and to advise regional and national authorities about subjects regarding the F&F Law. Its members are experts in the domains of hunting, agriculture, nature-protection and animal-welfare. Those who apply for a hunting-license have to pay an amount of money to fund this Fund.

Chapter 7; Other regulations (art. 101-103)

In this chapter some general articles are stated about the possibility to demand cooperation from product- or trade boards, the ability of the national government to appoint an organization to regulate the ownership of protected species (birds of prey for example) and the time it takes to put an AMvB into force (8 weeks).

Chapter 8; Supervision-, punishment- and force regulations (art. 104-113)

The control on the regulations of the F&F Law is done by civil servants, appointed by the national or the regional authorities. If animals or plants are illegally held and they are found, the costs of sending them back to where they belong can have to be paid by the one who held them.

Chapter 9; Transition- and closing regulations (art. 114-127)

The first part of this chapter states what happens with exemptions and licenses based on the previous laws; they remain valid for the original term. Article 123 states that the Bird Law 1936, the Hunting Law, the Law of Threatened Exotic Animal- and Plant Species and the Law of Useful Animals are being withdrawn, as are articles 22-25 of the Nature Protection Law. After 5 years of being into force, the minister will have to send an evaluation after the effectiveness and the effects of the F&F Law in practice to the House of Representatives, and after that every 4 years.

Additions on the Flora and Fauna Law

In the part before, the Flora and Fauna Law has been described. However, this is not all F&F Law legislation. The F&F Law also has a number of so-called AMvB's and Ministerial Regulations; additions so to say. They are not in the F&F Law itself, but have nonetheless legal power. At this moment, the F&F Law has 7 of these additions. All but one are relatively small; possessing less than 10 articles.

² see the 'Decree Exemption Protected Animal and Plant species' below, under [1]

³ see the 'Decree Exemption Protected Animal and Plant species' below, under [2]

⁴ see the 'Decree Exemption Protected Animal and Plant species' below, under [3]

Decree Exemption Protected Animal and Plant species

The most important addition is probably the 'Decree Exemption Protected Animal and Plant species' ("Besluit vrijstelling beschermde dier- en plantensoorten"). Article 2 of this Decree states that a list of indigenous animals and plants, mentioned in Appendix 1, is the list mentioned in article 75 of the F&F Law [1]. Furthermore, this article states that the allowance of article 75 "to make it possible to pluck, catch or own 'them' in strictly controlled circumstances" applies to 10.000 specimens of the mallard (*Anas platyrhynchos*) a year [2].

The 'other interests' mentioned in article 75 [3]; for which it might be possible to get an exemption of the articles 9-18, 50, 51&53 for (animal) species protected by the Habitat & Birds Directive or the national list in Appendix 1, are also stated here. These interests are i.e. major molestation caused by protected indigenous animals, the carrying out of activities in accordance with continuing management, maintenance activities in forestry and agriculture, and some more. There are however a lot of exceptions to this again. In some cases an exemption is only granted if there is no economic purpose and when there is 'acted careful'. Careful acting means (in this case) that there is no substantial influence and everything reasonable possible will be (not) done to prevent animals or their eggs from being harmed and their resting- and nesting places from being destroyed.

The Decree continues with stating that articles 9-11 and the first part of 13 of the F&F Law (about the trade in protected species) do not apply to breded animals which belong to a protected indigenous specie stated in a Ministerial Regulation (which is not implemented yet). The same applies to article 8 and the first part of article 13 of the F&F Law, concerning cultivated plants which belong to a indigenous specie protected in a Ministerial Regulation.

The articles 13 and 14 give permission to prevent and help frogs and salamanders crossing roads and to treat ill or wounded animals.

Article 16b states that the articles 8-12 of the F&F Law do not apply when:

- carrying out of activities concerning maintenance of infrastructure (railways, watercourses, etc.) and nature-management
- carrying out of activities concerning continuing management or maintenance regarding forestry or agriculture
- continuing use
- carrying out of activities regarding spatial development and planning.

These exemption applies to species:

- listed in a Ministerial Regulation (not implemented yet)
- other protected indigenous animal and plant species, if the activities are carried out according an approved Code of Conduct.

A Code of Conduct will be approved if it can be guaranteed that the species are not economically used and that there will also be careful acted when this Code is applied.

After this, the Decree states in article 16e that the articles 9-12 of the F&F Law do not apply for the mole (*Talpa europea*), the woodmouse (*Apodemus sylvaticus*) and common vole (*Microtus arvalis*). And the house shrew (*Crocidura russula*) when it is inside a building. The introduction of animals to fight plagues or weeds is allowed, on a list in a Ministerial Regulation (which is not implemented yet) is stated which species are allowed to be used for this (art. 16h).

Decree Assignment animal and plant species Flora and Fauna Law

The 'Decree Assignment animal and plant species Flora and Fauna Law' (Besluit aanwijzing dier- en plantensoorten Flora- en faunawet) contains the list of protected plant species in its appendix (art. 2). There are a few mammals whose domesticated individuals are not protected animals. This are the European polecat (*Mustela putorius*), the rabbit (*Oryctolagus cuniculus*)

and wild boar (*Sus scrofa*) (art. 3). The same applies to domesticated individuals of 4 bird species: Greylag goose (*Anser anser*), Canary (*Serinus canaria*), Rock dove (*Columba livia*) and Mallard (*Anas platyrhynchos*) (art. 4).

This Ministerial Regulation is also the one in which the 'other protected animals' of Chapter 2 of the F&F Law are listed (art. 5).

Regulation Assignment animal- and plant species Flora and Fauna Law

Besides this Decree, there is also the 'Regulation Assignment animal and plant species Flora and Fauna Law' (Regeling aanwijzing dier- en plantensoorten Flora- en faunawet), focusing on international agreed obligations. In its article 2, this Regulation states that besides the protected plants in the Appendix of the previous Decree, the indigenous plants in the Appendix 1 of this Regulation are also protected, because of international obligations. The same applies to animals in article 3 and listed in Appendix 2.

Article 4 states which these protected exotic species are. These are species placed in Appendix A, B, C and D of the 'European Order nr. 338/97, concerning the protection of wild-living plants and animals by controlling the trade in them (PbEG 1997, L 61)⁵, Appendix IV of the Habitat Directive and species in the Appendix 3 of this Regulation. Besides of these lists, the following species are also protected: beaver (*Castor canadensis*), coyote (*Canis latrans*), sable (*Martes zibellina*), raccoon (*Procyon lotor*), muskrat (*Ondatra zibethicus*), pekan (*Martes pennanti*), American badger (*Taxidea taxus*), american marten (*Martes americana*), harp seal (*Phoca groenlandica*) and hooded seal (*Cystophora cristata*) (art. 4).

Some smaller regulations:

The 'Regulation acknowledgement hunting exam and taxidermist exam Flora and Fauna Law' (Regeling erkenning jachtexamen en preparateursexamen Flora- en faunawet) states which exams are acknowledged as the exams mentioned in the F&F Law that hunters and taxidermists have to pass.

The 'Regulation Tariffs Flora and Fauna Law' (Regeling tarieven Flora- en faunawet) regulates the payments that some exemptions and licenses require. The costs range from €15 to €300; the majority of them has the price of €60.

The 'Regulation seeking, picking and protecting of plover-eggs Flora and Fauna Law' (Regeling zoeken, rapen en beschermen kievitseieren Flora- en faunawet) gives a legislative framework regarding the plover-egg picking. It states that it is up to the regional authorities to allow plover-egg picking in the period of 1 March till 9 April. This can be done only to acknowledged co-operatives of meadow-bird protectors that cover at least 5000 ha. The co-operative can give individuals a license to pick plover-eggs. It is not allowed to pick more than 15 eggs per person. The co-operative monitors the amount of granted licenses, picked and non-picked eggs and number of breeding pairs. Persons picking plover-eggs should also protect the nests against agricultural activities by marking them or placing nest-protectors.

The last Ministerial Regulation is the 'Assignment tracing qualification Flora and Fauna Law to special tracing-officials' (Toekenning opsporingsbevoegdheid Flora- en faunawet aan buitengewoon opsporingsambtenaren). This just means what the title indicates; special tracing-officials or fraud officers are allowed to trace the facts that are prohibited by the F&F Law. These tracing-officials ('BOA's') are no police, but do have a detection competence concerning specific domains of punishable facts. One of those domains is the flora and fauna legislation.

⁵ Successor of the CITES-convention