

Nature management plans as a tool to facilitate decision making processes

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Abstract

In many member states of the European Union the implementation of the Birds and Habitats Directive is problematic. In the Netherlands many decision making processes ended up with judicial intervention. Nature conservation has become a legalistic discourse. Nature management plans have been suggested as a solution to the problematic decision making situation in and around protected areas. The Dutch government included the formulation of nature management plans in the new Nature Conservation Law. This paper analyses the problematic implementation of both directives in the Netherlands in order to understand the context in which nature management plans function. It shows that these decision making situations can be very complex. Many different actors are possibly involved and they are to a large extent interdependent. Uncertainties about the future should be incorporated in the nature management plans. Emphasis needs to be placed on relational aspects of the decision making process in order to reach agreement and cooperation. Nature management plans should not become blue-print plans, but documents that can facilitate decision making in, and around protected areas.

Keywords: Birds and Habitats Directive, spatial planning, participation, nature conservation legislation

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 has become an essential objective of the European Union. Member States have to implement these directives and transpose them into their own policies and legislation. In the Netherlands the implementation of these Directives has caused several problems such as delay of planning processes. Many conflicts ended up with judicial intervention. An important cause of these problems is the improper and insufficient transposition of the requirements of the Habitats Directive into national legislation. Only recently (February 2005) this has been fulfilled. Meanwhile the Dutch governments have sought for solutions to avoid problems in future decision making processes. One of the solutions mentioned is the formulation of nature management plans for sites protected under the Birds and Habitats Directive. The obligation to formulate management plans is included in the recently accepted Dutch nature conservation law. These management plans should clear management objectives and ease assessment of plans and projects with possible effects on protected nature values. Despite the fact that no nature management plan has been made yet, and no one knows how they will function, the expectations are high. Such expectation can be unrealistic in part because people lack clarity about what plans are and how they work (Hopkins, 2001). In this paper we will analyse the implementation of the Birds and Habitats Directive in the Netherlands, the arisen conflict situations and the situations in which the nature management plans are ought to be working. This analysis will be used to elaborate the possibilities of these nature management plans and the role they can have in decision making processes.

Birds- and Habitats Directives and spatial planning

The Birds Directive was adopted in 1979 in order to protect all wild birds and their natural habitat in the Member States of the EU. In 1992 the Habitats Directive was adopted with a similar aim, the conservation of biodiversity and especially endangered flora and fauna. Together, these directives aim to create a European ecological network of protected areas, called Natura 2000. Member States have to select and to designate Special Areas of Conservation (SACs) under the Habitats Directive and Special Protection Areas (SPAs) under the Birds

Directive. These areas will form the Natura 2000 network. The basis for this selection should be criteria given in both directives together with relevant scientific information. Once sites are designated the legal regime as formulated in article 6 of the Habitats Directive applies. Additional to the designation of sites, Member States have to implement 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 distinguish rules about site protection and species protection.

The direct consequences of the Birds and Habitats Directives are obvious and considerable. Member States have to designate sites and adapt their policies and legislation. But, as also concluded in Van Ravesteyn & Evers (2004), the indirect, or unseen, consequences are often more significant. An example of such an indirect consequence is the necessity to take into account the requirements of the Birds and Habitats Directives in the decision making about physical interventions.

Article 6 of the Habitats Directive requires that: *“Any plan or project, likely to have significant effects on the management of protected areas is subject to an appropriate assessment of its implications. The competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.”*

Often these consequences become manifest in times of direct conflict. Conflicts arise not only with new developments, also current use is subject to an appropriate assessment. Designated areas are seldom, if possibly ever, exclusively used for nature conservation. In this respect the SPAs and SACs differ from traditional nature reserves in the Netherlands. Dutch nature reserves are mainly owned and managed by nature conservation organisations and have as main objective the protection of this site. The designation of SACs and SPAs does only imply that the requirements of the Habitats Directive become binding and that all activities that affect nature conservation objectives are carefully assessed. It does not imply that these areas become nature reserves or parks with nature conservation as main objective. Also the ownership does not change. The effect of the Birds and Habitats Directive extends beyond the boundaries of the designated areas. In the Netherlands several areas, like gardens or meadows, are excluded from the designated area, but this does not imply that activities in these places are excluded from an appropriate assessment. Activities at these places still can have significant effects on protected nature values in the surroundings. Many activities possibly conflict with nature conservation and therefore there are many situations in which nature conservation legislation becomes relevant in decision making.

Problematic implementation in the Netherlands

Two developments illustrate the problematic implementation of the Birds and Habitats directives in the Netherlands. The first signal came from nature conservation NGO's who started to blame the Dutch Government for the fact that they failed to designate the necessary sites. The same held for the sites to be designated under the Habitats Directive. For the same reason the European Commission announced legal action against the Dutch Government. In 2003 the Dutch Government finished the designation of sites in the Netherlands. Similar developments and actions have happened in other member states (Weber & Christophersen, 2002; Paavola, 2004; WWF, 2001). Another illustration are the many plans and projects that have been frustrated by lawsuits. Drawing on European legislation (mainly the Habitats Directive) NGO's have brought many plans and projects that they called illegal to court. Several cases were decided in the NGO's favour and the projects were delayed or stopped. A well-known example is the case of the wild hamster, which stopped the construction of a planned business centre in Heerlen. These conflict situations show that European nature conservation legislation has become an important aspect in decision making processes. The Dutch government is to a large extent responsible for this problematic implementation. Not only the designation of sites was behind schedule also the transposition of the directives into Dutch legislation was not finished until recently. As a consequence of this failure, Dutch legislation was conflicting with the European directives. Not surprisingly, decisions making in this legally obscure situation led to many problems.

Studies of the implementation of the Birds and Habitats Directive show several factors that caused the problems (see for example Bastmeijer & Verschuuren, 2003; Sanderink, 2003; De Boer & Van den Brink, 2005). Many actors involved in decision making processes, for instance project developers and lower tiers of the government, were unfamiliar with the Birds and Habitats Directive and the exact consequences of these directives. For many people it was unclear which legislation (national or European) was to be followed. Also the occurrence of protected species is unknown to many actors. This lack of knowledge and information and sometimes also ignorance of information resulted in decision making that did not take the Birds and Habitats Directive into account. Actors did not know that they had to deal with these directives or they did not know how they had to deal 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 site which has been designated.

Due to insufficient knowledge and lack of information this requirement was seldom met. Careless decision making is required by the Dutch Administrative law and many decision in which the requirements of the Habitats Directive were insufficiently taken into consideration, did not meet this requirement. This was enough reason for the courts to annul these decisions.

Cancelled and delayed projects gained a lot of attention in the press. Many newspapers wrote about the little animals that stopped the construction of roads, business parks or housing development. Policy makers and scientists (mainly jurists) discussed about adaptations of laws and the formulations of norms in order to get clear how the Birds and Habitats Directive could best be implemented in the Dutch planning practise. At this point, the government started campaigns to inform actors about the consequences of the Birds and Habitats Directive. Involved actors learnt from these problems and gave nature conservation legislation more attention in decision making processes. The new nature conservation laws proved to be a booming business for consultant companies. These consultants were hired to study effects and to write the required reports about these effects, about alternative solutions and about the reasons of overriding public interest. The study of conflict situation in which the Habitats Directive played an important role revealed that the problems are not so much caused by the legislation as such, but rather by governmental failure to implement the directives and failures in the communication and knowledge exchange related to it. In many cases, the courts annulled decrees since the requirements of the Habitats Directive were insufficiently taken into consideration 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. The Habitats Directive often was not or improperly taken into consideration.

Interpretation and application

The European Commission formulates directives, like the Birds and Habitats Directive, and Member States have to implement these directives into their own laws, regulations, policies, administrative provisions and specific situations. This implementation will never be uniform. Differences in implementation are unavoidably. We distinguish two sets of mechanisms that cause differences in the implementation of European legislation: the way in which the legislation is interpreted and the way in which this legislation is applied. These two causes are interrelated. The way the legislation is interpreted determines the way in which it is applied and vice versa. First interpretation. The Birds and Habitats Directive, or rather the text of these directives, get meaning through interpretation. The directives have to be interpreted in specific situations. This can be a planning situation in which the directive has to be used to make a decision, but also a situation in which the directive has to be translated into new text, for example the formulation of laws, regulations or policies. Each interpretation of the directives, done by different people, at different moments, for different reasons, will be different. Different interpretations of the directive will lead to different implementations. One of the situations in which interpretation plays an important role, and in which this interpretation is very obvious, is the translation of the text of the directives into the different languages of the Member States. 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. Also the way in which the directive is applied, 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. The way in which laws are used differs with each style of regulations (Ringeling, 2002).

There are many ways in which the Birds- and Habitats can be interpreted and applied. The freedom to decide about the way of implementing rules and laws is called discretionary freedom or discretionary space (Bakker en Van Waarden, 1999). The leeway, that on the one hand gives authorities the possibility to use the legislation in a flexible way, adapted to special circumstances, might on the other hand lead to complete different usage of the legislation. To prevent arbitrariness, a more strict and uniform usage is often strived for. But then again strict adherence to the Birds and Habitats Directives limits the possibilities for local authorities to cope with specific circumstances. This contradiction is important when studying the implementation of European directives, like the Birds and Habitats Directive. A discussion about flexibility versus uniformity is important on European level, but also at a national level and even on local level. Once Member States have implemented the directives into their own legislation and policies, the implementation to lower tiers of the government and to practice is likely to meet similar problems.

Interpretation and application of the Habitats Directive in the Netherlands

A study of the implementation of the Birds and Habitats Directive in the Netherlands shows that the first interpretations of the directives are done in court. Interpretation by judges. They determined from their

perspective whether decisions met the requirements of the Habitats Directive. This formal interpretation set the outline for the debate about the implementation of the Birds and Habitats Directives in the Netherlands. Only after several lawsuits and pressure from NGOs, project developers, and lower tiers of the government, the national government started to participate in the discussion about the Habitats Directive. Especially in the beginning this discussion was dominated by legal advisers. In the discussion two major complaints about the Birds and Habitats Directive were given. 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 called too vague. Especially terms like significant effects, appropriate assessment or imperative reasons of overriding public interest did not give clearness about how to meet the requirement of the Habitats Directive. 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. To deal with different views, interests and opinions, it is the EU's practice to draft legislation that is necessarily vague. Also Pinton (2001) argues that the Habitats Directive is a potential for conflict because it lacks the crucial issue of the coordination between the various poles of scientific knowledge, social practises and political decision making.

The critics that the directive is too strict while at the same time ambiguous can be linked with the contradiction between flexibility and uniformity. On the one hand the legislation can be interpreted very strictly, thus frustrating all plans and projects. On the other hand the legislation offers space for interpretation, but this is seen as being too vague. Many of the articles written about the implementation of the Birds and Habitats Directives and their consequences for the Dutch planning practice have been written by jurists. Their focus is on formal aspects of the legislation. Their interpretation is from a juridical perspective, and therefore limited. It lacks an interpretation toward practical use. 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 direct transposition) but that there are still no guidelines how to use this legislation in decision making. Due to the strictly formal interpretation of the Birds and Habitats Directives decision making is more and more becoming a legalistic discourse.

The number of plans and projects that have been frustrated might suggest that nature conservation gains by a more strict legislation. The Birds and Habitats Directive have increased the possibilities for nature conservationists to take legal action against plans and projects with possible negative effects on nature values. But the question is whether this "victory" will be sustainable and if it indeed improves nature conservation in the long run? Influenced by the Birds and Habitats Directives, decision making about protected nature shows a shift in focus from content towards process. Courts judge decisions by looking if the necessary studies were conducted, not how these were conducted. The presence of research studies proved to be more important than their content. 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 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, have to 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.

Most actors know about these requirements and learned how to deal with them. But instead that this led 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 are already taken. An example of this rationalisation of decision making (Flyvbjerg, 1998) is the report "The public interest of cycling path 10" (Goossens et al., 2004). Recently, the province of Zuid-Holland decided to carry on an old initiative to construct a specific cycle path through a protected dune area. They realised that this cycle path has negative impacts on the nature values of the protected area and that, following the Habitats Directive, the realisation can only be allowed if there are reasons of overriding public interest. They asked a consultant company to provide the required report. Not surprising the main object formulated in the mentioned report is to prove (thus not to study) the public interest of this cycle path. This example shows that consultant companies become very important in decision making. 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 paid by the initiators of the activities. One can understand that this gives them a difficult and sometimes suspicious role in decision making. This shows that implementation problems have not been solved yet. Looking at the main objective of the Habitats Directive we can conclude that decision making still does not always meet the requirements of the Habitats Directive. We see that from a nature conservation perspective the formalisation of nature conservation legislation has its disadvantages. Legislation does not automatically guarantee an appropriate assessment in decision making, but it does lead to higher process costs, more conflicts and decision taking through lawsuits. These conflicts drift involved actors further apart and therewith raises more opposition against nature conservation. We notice that in the Netherlands through the formalisation of nature conservation nature conservation has gained a little but that protection through strict legislation also has some important disadvantages.

Nature Management Plans

The previous paragraphs describe the problematic implementation of the Birds and Habitats Directive in the Netherlands. Policy makers presented several solutions to these problems, like additional rules, laws and norms. The formulations of nature management plans for protected areas is one of them. The formulation of management plans is also mentioned in the Habitats Directive, but with a different role in mind. The government is responsible for the management of the areas and management plans can be used to ensure sure that the necessary management actions are taken. Management plans have to make clear nature objectives and describe necessary measures. The formulation of management plans as a solution to prevent conflicts between nature conservation and other activities requires a different kind of plan. In this context management plans have to facilitate decision making about these conflicting interest. Decision making in which the requirements of the Habitats Directive are important. Paavola (2003, 2004) argues that the management plans and procedures will importantly influence how competing interests in the use of protected areas are balanced and how legitimate and effective their management will be. He states the importance of recognition, hearing and participation of stakeholders. In this context a focus on using plans when making decisions makes more sense than a focus on implementing the plan (Hopkins, 2001). Nature management plans are worth making if decisions made using these plans will be different than decisions made without these plans. Different in this context means meeting the requirements of the Habitats Directive and avoiding conflict situations. Management plans will have two functions. They have to ensure management of the areas (following the Habitats Directive) and at the same time they have to facilitate decision making processes about competing interests. In this paper we will focus on the second role. We will study if and how management plans can facilitate decision making processes. This raises many questions. Who is or are involved in these decision making processes? What kind of decisions have to be taken? How should these plans look like? What information should they contain? Who is responsible for the formulation of these plans? To answer these question we will have to look at the decision making processes in which management plans have to play a role.

The Birds and Habitats Directive have to be implemented in all designated areas. Following these directives, decisions have to be made about activities that conflict with nature conservation goals. The designation of areas does not exclude other activities. In 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” (EC 2003, p. 3). Not only activities within the boundaries of the designated area are subject to such an assessment. All activities, also activities outside the area, likely to have significant effects have to be assessed. Many activities, for instance the development of infrastructure, agricultural activities, or recreation, might possibly affect protected areas and species. The designations of protected areas under the Birds and Habitats Directive thus has the potential to make article 6 of the Habitats Directive relevant in many decision making situations. It is important to know that these decision are not about nature conservation goals. They are about other activities that possibly affect nature conservation goals. These activities are tied to actors. In practise, a wide range of actors (organisations and private persons), undertaking a wide range of activities, need to deal with the consequences of nature conservation legislation. An important actor in these decision making processes is the government. Following the Habitats Directive the national government is responsible for the management of the designated areas. This responsibility urges the government to ensure that owners actively manage the sites and take necessary conservation measures. Decisions about plans, projects and activities have to be made by different tiers of the government. Besides they have to take appropriate steps to avoid the deterioration of natural habitats and disturbance of species by existing or new activities. Designated areas (SPAs or SACs) often exceed the boundaries of territorially defined jurisdictions. This implies that in many situation it is not possible to place the management of and decision making about these areas within the context of an existing governmental plan or policy. The fact that these issues cross territorial boundaries creates problems of enforcement. The implementation of the Habitats Directive in a specific area cannot simply be based on existing legal systems, but requires active cooperation. The national government depends on the lower tiers of the government and they in turn depend on other actors, for instance the owners of the area. Actors are interdependent. Not only actors, also their actions are interdependent. New institutional economics addresses that collective action and provision is needed to govern joint impact goods and common pool resources, like landscapes and nature heritage (Paavola, 2003). Actors are largely interdependent because their alternatives and actions are tied together in such way that it is impossible to realise all interests simultaneously. Measures taken to protect a certain species are likely to limit or frustrate other actions. Interdependence and its different forms and implications are important to understand decisions situations (Alexander, 2001).

Due to these interdependencies, the context in which decision about activities have to be made is more complex than is often recognized. Implementation of nature conservation legislation in particular areas entails more than just applying rules. This situation gets even more complex if we take into account that uncertainty in decision making is inevitable (Hopkins, 2001). Different types of uncertainties should be considered when designing nature management plans. There are for instance uncertainties about the dynamics of the population of protected species, uncertainties about future activities that will be initiated, uncertainties about the effects of these activities and uncertainties about values and preferences of actors in future times. Plans become out of date

because of unexpected changes in the ever changing context of decision making. Decisions are likely to be based on the latest insight, not on the insights prevailing at the time the plan was made. As a consequence these decisions might give different results than the ones foreseen in the original plan. In complex decision making situations, in which many actors are involved and in which many aspect are to some extent uncertain, plans will never be implemented “according plan”. This does not mean that plans cannot be useful in these situations. Plans can incorporate uncertainty (Hopkins, 2001). Flexibility offers possibilities to deal with these uncertainties (Van der Valk, 1989). Plans should not be regarded as a blueprint for the future. Plans need to be regarded as a part of the decision making process (Van Ark, 2005). They can be used as a framework of information. Information that is useful to decision makers. This implies that nature management plans should be seen as an element in a process. A process that can be initiated by the development of these plans. The formulation of nature management plans therefore should not focus on the development of a comprehensive plan. It should be used to start a process in which actors can be joined. In a situation in which the government depends on other actors in order to reach certain goals steering through networks seems to offer the best possibilities (Goverde & Tatenhove, 2000). Van Ark (2005) shows that trust is an important precondition for the initiation and the continuation of cooperation in complex networks. Trust can be an important coordination mechanism in coping with complexity and uncertainty. Nature management plans should emphasis a collaborative planning process, the involvement of different actors and their commitment. Nature management plans therefore should not be made by a single actor. Involving the stakeholders in the formulations of these plans and in decision making processes can help to generate knowledge, provide the needed resources and legitimacy of plans (Hajer & Zonneveld, 2000). Nature management plans can not prevent the necessity of decision making situations, but they can prevent these situation from becoming conflicts.

An important aspect of nature management plans is the dilemma of flexibility versus uniformity. We have shown that this issue is important in discussions about the implementation of the Birds and Habitats Directive. Nature management plans offer the possibility to interpret and apply general legislation in specific local circumstances. All protected areas are designated to protect particular habitats or species. These habitats or species are important in decision making processes. Decision makers can only take into account these protected nature values if they have detailed information about them. They need up to date information about the population of species and the dynamics of these population. They need to know the status of protected types of habitat. This information is indispensable if effects of activities need to be assessed. Nature management plans therefore need to describe the conservation objectives and conservation measures. Monitoring the dynamics of habitat types and species populations is required to notice trends and to provide up to date information at all times. The emphasis in decision making should be placed on the main goal of legislation, the protection of specific nature values in a certain area. Decision making thus follows national nature conservation legislation (uniform), but by taking into account specific habitats or species and by emphasising the goal of legislation and not only the process, it also offers possibilities to use this legislation in a flexible way.

It might be interesting to make a comparison with natural resource protection in the USA where the most ambitious large-scale regional planning efforts have taken place through habitat conservation planning under the Endangered Species Act (Melious, 2002). The Endangered Species Act prohibits the “take” of endangered species, unless actors obtain an permit. Similar to the Habitats Directive, it is necessary to gain permission for plans or projects that might have significant effects on protected species. Under the Endangered Species Act the development of an Habitat Conservation Plans offers the possibility to obtain such permit. Contracts are used to assist ecosystem management. “In practise the system has always involved negotiation and leeway, as both regulators and regulated parties struggle to implement abstract regulatory standards in order to benefit their own interests to the greatest extent possible” (Melious 2002). In Europe, the formulation of nature management plans can be used to start such negotiation process. A more open discussion and negotiation process about the protected areas is to be preferred over the current rationalisation of decision making. It is better to trust in the outcomes of these negation processes in which legislation is used as a back up, then to have a blind faith in procedures as described in legislation.

Conclusions

The Birds and Habitats Directives have been formulated because member states of the European Union have agreed to protect biodiversity. In practise there is a big difference between the formulation of aims about nature conservation in directives and acting upon these aims. The directives have to be implemented. The national governments of the member states play an important role in this process. They have to implement the directives into national legislation and policies, they have to raise awareness for the directives and they have to inform other actors about the consequences. The practical implementation (interpretation and application) of the European Birds and Habitats Directives in member states depends on the responsible authorities. These authorities have to decide about activities that possibly conflict with nature conservation objectives. Their knowledge about the directives, and their views, determines how nature conservation legislation is used in these decision making processes.

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 effects of activities on the population of a certain species, one needs detailed information about this population and its dynamics. The unawareness or limited knowledge about relevant legislation and how this should be used, was another reason for many conflict. The Dutch national government is largely responsible for the problematic implementation. For a long time they failed to transpose the Birds and Habitats Directives into national legislation and they failed to inform actors about the consequences of both directives.

Legislation, or laws, are a means, not a goal! The implementation of the Birds and Habitats Directive in the Netherlands however shows that due to the emphasis that is put on legal aspects in decision making, the legislation is becoming a goal on itself. The Birds and Habitats Directive have become holy books and judges have become priests, knowing the only right interpretation of these books. One should however realise that the dominating legal interpretation is only one of many possible interpretations of these directives. The situation in the Netherlands shows that the European directives are more and more regarded as what Bardach & Kagan (1982) call regulatory unreasonableness. Decision making through lawsuits enforces opposition against nature conservation legislation. As a consequence it strengthens the unwillingness of actors to cooperate and to follow the rules. The Birds and Habitats Directive are the results of a deliberation process between Member States and some NGOs. The final text of both directives is the compromise that is reached in this process. The fact that different Member States thought that their nature conservation policies were already meeting the requirements of these directives shows that each of them had given different interpretations to these directives. The strict legal interpretation that is given to both directives by courts all over Europe proved these Member States were wrong. They had to adapt their policies and legislations. Consequently nature conservation legislation has gained importance. Strict legal interpretations have put more emphasis on the procedures that are formulated to protect endangered species and habitats. But at the same time the goals of these procedures are fading into the background due to a shift from content to form of decision making processes.

The formulation of nature management plans is an answer to a period with many conflicts. People hope and expect that these nature management plans will facilitate decision making and therewith reduce the number of conflicts. We agree and hope with them, but we like to show that in order to fulfil this role, nature management plans should be regarded as part of a decision making process. The formulation of management plans for Natura 2000 areas offers possibilities to refocus on the main goal of the Birds and Habitats Directives, the protection of flora and fauna and their natural habitats. There is however a real danger that the formulation of management plans will become a new goal, that the focus will be put on formal aspects and that a nature management plan will be regarded as a blue-print plan. Using plans in this way often results in fictions about certainty and opportunism (Van der Valk, 1989). The Dutch government should take into account the wide variety of actors that is involved in decision making situation about protected area. In these situations the governments largely depends upon these other actors. This interdependence and the notions of uncertainty set the outline for the nature management plans. The process of formulating nature management plans should be given emphasis because this offers possibilities to create mutual understanding and trust among the actors involved. In such way nature management plans can be used to avoid future conflicts and to reach the ends of the Birds and Habitats directive: the protection of biodiversity.

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