

# Nature and Dredging

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## Dialogue instead of confrontation



### “Nature and Dredging industry”

Peter Symens, NGO 'Natuurpunt'



Marc Stordiau,  
Chairman European Dredging Association

### Environmentalists and dredging industry aim at partnerships for port and ecological development!

Brussels, 28<sup>th</sup> October 2006, from our EuDA correspondent

A passionate plea for dialogue instead of confrontation took place between nature and industry sectors last Thursday 28th October. During the Annual General Meeting of the European Dredging Association (EuDA), the dredging industry and NGO 'Natuurpunt' debated on sustainable development of economy and environment. After a lively debate, under excellent guidance

of Prof. Dr. Patrick Meire of the University of Antwerp, the invited parties came to the conclusion that different views should not be any obstacle anymore to achieve sustainable port development. However, beyond willingness and technical solutions, stakeholders have to be brought on board and the legislative framework has to be adapted.

### Ports are primary confrontation ground

The major ports of Northwest-Europe are critical engines for economic growth, providing added value and employment - meaning prosperity! The extension of ports requires the deepening and maintenance of

fairways, as well as the reclamation of land. However, many ports are located in estuaries, or close to nature reserves, which consist of tidal flats and valuable wetland, providing habitat for vulnerable plant

and animal species. In consequence, where tensions do indeed exist between economic development and environmental protection, ports are the primary confrontation ground!

### Confrontation between port interests and the environmental movement

“This can be seen as a typical clash. Numerous times NGO “Natuurpunt” and other environmental organisations went to court, and each time they won the case. At the end of the day, a compensation scheme for the loss of habitat was agreed on. It was

proved that port development in the middle of an SPA is possible after all, provided that environmental EC objectives are properly taken into account and by doing so many problems can be avoided and solved through dialogue. The lesson learned

here, is that a strategic plan for port development should define - besides economical objectives - clearly, and proactively, ecological objectives.” (Peter Symens, NGO “Natuurpunt” - page 3)



Various problems arise from the Habitats Directive and other Environment Directives WHY?

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# Dialogue with Stakeholders

Wouter Dirks, Chairman EuDA Environment Committee

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**EuDA:** “Stakeholders have come to the conclusion that dialogue is to be preferred above confrontation; public authorities have to review the legislative framework and procedures just as well. The Directive on conservation of natural habitats of wild fauna and flora dates back from 1992. The Directive on the conservation of wild birds (1979) is even older.

The community objectives are fully applicable, and the concept of SCI's (Site of Community Importance), SAC's (Special Area of Conservation) and SPA's (Special Protection Area) have become an integral part of every major infrastructure project.”

## Various problems arise from the Habitats Directive and other Environment Directives – WHY ?

### DISCREPANCY BETWEEN EU TRANSPORT AND ENVIRONMENT POLICY

We have come to the conclusion that there exists a wide gap between EU Transport Policy and Environment Policy, the Environmental Directives are integrated into policies for maritime transport and infrastructure. However, there is no obligation to consider other EU policies when designating sites that fall under the Birds and Habitats Directives.

### GREY AREAS

Grey areas of definition, leaving room for interpretation in national- or European Courts, are left in the procedure for project approval as entered in Art. 6 of the Habitats Directive. Legal uncertainty follows from ambiguous criteria such as ‘imperative reasons of public interest’; the geographic extent of both the need to investigate alternative solutions and the distance to be considered for the possible effects of a project; the role

of ‘scientific evidence’ to support the decisions; and the meaning of ‘appropriate assessment’ in specific cases. Yet, notwithstanding these grey areas, it is common understanding that compensation measures should eventually result in habitat areas which are in quality and quantity similar to the threatened ones, and located in the close vicinity of the original site.

### SITE DESIGNATION

The Directives have no provision on

how to deal with pre-existing user rights, nor is there a mechanism to compensate for property rights that have been infringed as a result of the site designation.

### GUIDANCE ON DECISION MAKING

With respect to the application of the Habitats Directive, neither EC guidance, nor the case law, have clarified fundamental uncertainties and potentially conflicting demands of the decision making procedure.

### PORTS STRATEGIC IMPORTANCE

The lack of clarity and definition of the IROPI test is obvious from the

fact that no ruling by the European Court of Justice or by any national court has given special weight to the classification of a port or waterway as being of strategic importance, and listed under the Trans-European Network of waterway transport infrastructure.

For contractors it can be frustrating that their creative and innovative ideas for improving environmental conditions cannot be realised as a consequence of interpretation some Members States give to the Birds- and Habitats-, Waste Directives and Water Framework Directive.



## EC environmental legislation prohibits... improvement of the environment

In the Netherlands, the Markermeer has turned into a lake with a relatively poor environmental status. Over many years, biodiversity has decreased and it will continue to do so in the future. The predominant type of fish is smelt, which is the main food for a very large population of cormorants living in the nearby nature reserve the ‘Oostvaardersplassen’, a Special Protection Area. Cormorants are a protected species under the Birds Directive. Several initiatives have been taken to increase the functions of Markermeer and IJsselmeer, amongst other by wetlands in the IJsselmeer, a research initiative by the ‘Living with Water Foundation’, Ecorys and GeoDelft with the support of the dredging industry. One of the proposals for enhancing

the ecological potential and biodiversity, as part of this research initiative, is to deepen the lake in some locations and create wetlands in other parts. However, increasing biodiversity would potentially reduce the amount of smelt in the Markermeer... and the protected species of cormorants may become hungry birds. As it may effectively result in an impact on one protected bird species, an ambitious programme to increase the ecological potential of the Markermeer could in the future be halted as a result of European environmental legislation that is purely focused on protection and leaves insufficient room for innovative approaches that may enhance biodiversity.

In conclusion, it is important to stress the need for innovation and practical ways to find solutions. These creative solutions will have to come from a partnership between dredging contractors

and environmentalists. If the framework of the environmental directives is indeed to be implemented over a long period of time, it is advisable that legal certainty is secured by refining the le-

gislation. Only then can the aspirations of dredgers and environmentalists be mutually satisfied, allowing projects to progress smoothly and efficiently to fruition.



# It's time to think again!

www.natuurpunt.be

Peter Symens, NGO 'Natuurpunt'



'Natuurpunt': "As the biggest and the oldest association for environmental protection in the Flemish region of Belgium, 'Natuurpunt' owns and manages more than 15.000 ha of land - with the aim of protecting, increasing and improving its natural characteristics. As such, this non-governmental organization reaches some 65.000 members

in 150 local sections, organizing activities in the field of conservation, environmental management, nature study and education, and follow-up of policy issues - including port development".

## Second thoughts for discussion

### EU ALLOWS FOR FILLING IN THE OBJECTIVES AS LONG AS FINAL TARGETS ARE MET

For all the strict environmental guidelines, it is noteworthy to remember that the EU allows for filling in the objectives - as long as the final targets are effectively met. The environmental legislation is mainly made up of framework directives, i.e. general guidelines which include such notions as 'valuable alternative' or 'overriding public interest.' Also, provisions for compensations (if implemented before damage occurs) may already go a long way, as was demonstrated during the legal battle for Deurganck-dock. As such, associations such as 'Natuurpunt' have been involved in developing the concept of 'temporary compensation scheme' - which ultimately focuses on the targets to be met.

### HAVE YOUR FACTS RIGHT!

There will always be some court so-

mewhere, which gives in to whatever legal challenge is made. Unreasonable actions can never be excluded. How can one construct a lasting consensus, if every single compromise can always be challenged by one particular group? In the end, most opponents may indeed agree and go for dialogue, but it is true that even one single dissenting claim can delay the execution of a project. What matters is to have your facts right. In the case of Deurganck dock, many different interest groups have gone to court - yet only associations such as 'Natuurpunt' have won all cases which they have introduced.

### THE NETHERLANDS

If a timeframe and means on reaching the EU environmental targets is agreed on, courts will not thwart a project. However, blame should be put at the right place. In The Netherlands for example, provisions on biodiversity in the law on Fauna and Flora go well beyond the EU

Directives on Birds and Habitats. The latter allows for flexibility and interpretation, but if national law is stricter than the European guidelines, EU Directives should not be blamed for rigidity.

### RIVER BASIN MANAGEMENT

The need for co-operation and dialogue instead of confrontation has a broader relevance than just the Birds and Habitat Directives. It even exceeds the framework of European legislation, and should be applied in national matters as well. Under the Water Framework Directive (WFD), the River Basin Management Plans should be ready by 2009. This is a call to extend dialogue also in this field. It cannot be denied that port expansion projects in fact destroy and diminish the total area of nature preserves. In the case of Deurganck-dock, many lobby and private interest groups went to court, but not every single claim was successful. In the view of 'Natuurpunt', the European environmental legislation was not written for opposing port extension projects.

### DIALOGUE

The aim of environmental legislation is, and should be, to conserve and to manage nature. If the Environmental Directives are abused for other reasons, it is obvious that claims are rejected in court. In particular, protection of biodiversity is but one aspect of an overall and much broader environmental picture. Even the most radical environmental group must agree that more was realized by way of dialogue, than confrontation could have dreamed of in the past 20 years.

### INVESTMENTS IN BETTER ENVIRONMENT: AN OPPORTUNITY

Taking environmental concerns into account is at a cost, especially with port expansion projects. However, too much attention is focused on the cost aspects. Investments in a better environment can as well be seen as an opportunity, also from an economic point of view. With regard to the deepening of the Scheldt, environmental development of the estuary

was first seen as a threat. At the end, all partners agreed that it was an opportunity, for example by creating a better investment climate.

### TAKING UP RESPONSIBILITY TOGETHER?

New approaches in contracting come into being. They involve close partnerships between public authorities, contractors, consultants and others. Contract forms such as public-private partnerships (PPS) and design, build, maintenance and finance schemes become a reality. A lot has been said about dialogue and co-operation. Would environmental associations such as 'Natuurpunt' be ready to join such co-operative contracting schemes and take up responsibility together with other partners? What would the chances be that environmental groups join public and private partners?

## Antwerp: Deurganck-dock

Intersecting habitat and bird protection areas, the 2,5 km, 594 million tidal dock in the port of Antwerp was inaugurated on 6th July 2005 following an eventful and laborious permitting and decision procedure. At the time, Deurganck-dock was the biggest port extension project in Europe, ultimately more than doubling container handling capacity. The decision to build Deurganck-dock had already been taken by the Flemish government on 20th January 1998. At various levels, mistakes were made, objections were raised by the European authorities, permits were nullified, social conflicts emerged - all of which led to serious delays and cost overruns. In the end, a special 'Validation Decree' was voted in parliament as a way out for the seemingly never-ending disputes.

'Natuurpunt': "In retrospect, the confrontation between port interests and the environmental movement can be seen as a 'typical clash'. Numerous times 'Natuurpunt' and other environmental ngo's went to court, and each time they won the case. At the end of the day, a compensation scheme for the loss of habitat was agreed on. It

was proved that port development in the middle of an SPA is possible after all, provided that environmental EC objectives are properly taken into account. A lot of negative energy was lost, especially since - in retrospect - it is obvious that a lot of the problems could have been avoided and solved through dialogue".

"The lesson we learned was that a strategic plan for port development should define - besides economical objectives - clearly, and proactively, ecological objectives. In doing so, compensation schemes should become the exception instead of the rule; the basic idea of the Ports and Habitats Directives is conservation. If ecological targets are carefully pre-established and effectively realised in the field in such a way that the favourable conservation status of the site is assured, then port expansion in the remaining area might become possible without any significant effects. The Birds and Habitats Directives impose no moratorium on future port extension projects. If only an integrated approach guarantees EC targets to be reached".

In the view of 'Natuurpunt', chances for co-operative agreements in the future would depend on two conditions: how environmental groups would be treated, and at what time they are ta-

ken on board. New opportunities are indeed presented, such as the possible extension towards Zeebrugge of the Seine-Scheldt link. For thirty years this project, which was formerly

known as the 'Noorderkanaal', was a taboo. Nowadays, mentality has changed, the approach is different, and public support seems possible. The environmental associations ac-

knowledge that formulas for co-operative agreements may be found. Issues which could never be discussed can now be taken into consideration.





# Environmental investments reduce indirect cost

Prof. Dr Patrick Meire, biologist and head of the research group  
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## Environmental investments reduce indirect cost

The present environmental legislations are focussing mainly on the protection of the structural aspects of biodiversity, being the presence of species and habitats. Recent research, however, has shown very clearly that not only the structure of ecosystems is important, but that especially the functions of ecosystems are of utmost importance to human wellbeing. Indeed, each ecosystem is producing many services.

Recognizing the fact that ecosystem services are essential in contributing to well-being justifies an approach where investments are made not only to realize port infrastructure

but also to enhance the functioning of ecosystems. This would of course increase the total costs of a project but will reduce indirect cost and in the long run will pay itself back. The realization of multiple functions of the development, i.e. infrastructure and ecosystem services, will generate acceptance among stakeholders and increase the value of the development from an environmental and societal point of view.

Science can contribute to develop this approach further and make it work in different marine environments. It has proven to be successful in the Western Scheldt area.



## Deepening of the river Scheldt

The bi-national project management of the Scheldt Estuary Development Plan (ProSes 2010) is a unique organisation, in which civil servants from the Netherlands and Flanders closely work together. The scheme has been worked out as a consequence of a 1995 political agreement between the two countries on the deepening of the Scheldt fairway to Dutch and Belgian ports. No less than 26 projects in Flanders, the Netherlands, or cross border are carried out, with the full support of both Dutch and Flemish environmental groups such as ‘Natuurpunt.’ These groups have

backed the Scheldt Estuary Development Outline 2010, because it focuses on more than just economic interests. Safety against flooding, improved accessibility for navigation, and maintaining/restoring natural quality of the system are equally important concerns in this unique programme. With regard to the deepening of the Scheldt, environmental development of the estuary was first seen as a threat. **At the end, all partners agreed that it was an opportunity, for example by creating a better investment climate.**

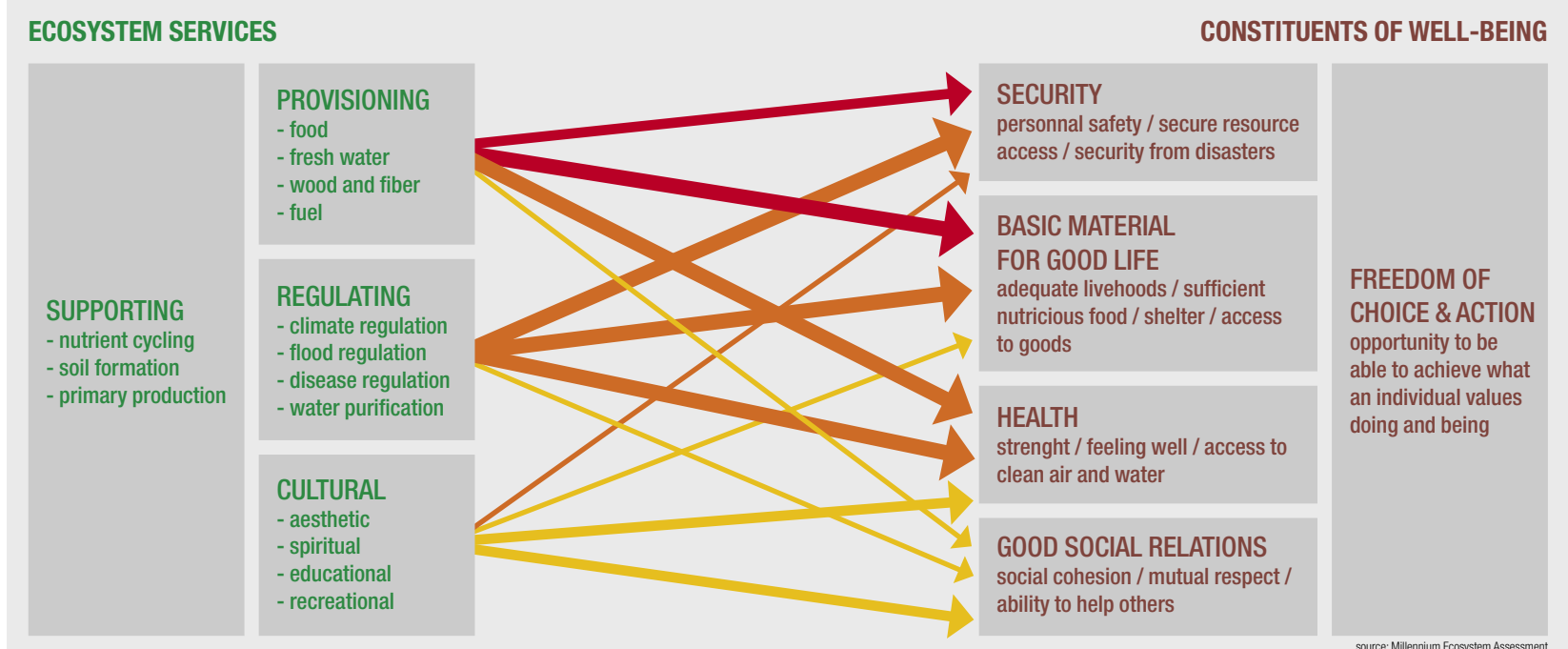
“Safety against flooding, improved accessibility for navigation, and maintaining/restoring natural quality of the system are equally important concerns in this unique programme.”

ARROW'S COLOR  
 potential for mediation by socioeconomic factors

low medium high

ARROW'S WIDTH Intensity of linkages between ecosystem services and human well-being

weak medium strong



source: Millennium Ecosystem Assessment