

## Decades of Dutch Denial

Hendrik and colleagues, many thanks for organizing this conference about the Habitat Directive.

My contribution bears the title "Decades of Dutch Denial".

It will be a story about decades of severe loss of Dutch natural habitats caused by excessive nitrogen emissions; about the apathy of Dutch politics, and how litigation appears to have led to a turning point in Dutch nitrogen emissions policy.

More than 50 years ago scientists started to discover a strong correlation between excessive airborne nitrogen emissions (Sulfur dioxide, Nitrogen oxide and Ammonia gas) and the decline of natural habitats. This was then commonly known as acid rain. It was then one of the major environmental issues that concerned public opinion.

About 35 years ago, gradually a nitrogen reduction policy was implemented by the Dutch government. Some positive results were reached, but a sufficient reduction remained elusive. The necessary reduction of Sulfur dioxide was mainly successful. But Nitrogen oxide and Ammonia gas emissions, although reduced, remained highly problematic.

Nitrogen oxide is mainly caused by industry and traffic, while cattle farming is the main source of Ammonia gas emissions. The Netherlands is a strange country. It has one of the highest density of human populations in the world, so space is scarce. That makes it curious to note that the Netherlands is also the countries that has one of the highest density of domestic animal populations; mainly dairy cows, pigs and chickens.

At the end of the 20th century, concern about the damage being done to Dutch nature gradually receded from the public debate, and at the beginning

of the 21st century, the Netherlands entered into the Decades of Denial. The Dutch nitrogen reduction policy was gradually dismantled, mainly under pressure from agricultural lobby groups. Emissions reduction policy remained only in name.

We may however assume - though the future is still uncertain - that these Decades of Denial ended for good on a fixed date: the 29th of May of the year 2019.

This was the day the Dutch Administrative Court dissolved the Dutch Nitrogen Policy Program because it contradicted article 6, 3rd paragraph of the Habitat directive. The Dutch program was declared illegal, because it could not guarantee that the extreme overload of nitrogen deposits on Natura 2000 territory would not increase over time.

This *Programma Aanpak Stikstof*, generally known as PAS, saw daylight in July 2015. This national policy program claimed to deliver nitrogen emissions reduction, but on closer reading appeared to be mainly a highly automated permit delivery program in which the emissions reduction was only an uncertain promise for future reductions.

To make a long story short, after 4 years of litigation, including the involvement of the European Court of Justice in Luxembourg with their verdict of 7 November 2018, the Dutch Nitrogen program collapsed in May 2019 with the final verdict of the Dutch administrative supreme court. As a consequence of this verdict several hundred disputed permits were annulled by the court.

Because this policy program served as the legal foundation for any project relating to nitrogen emissions fluctuations, the government fell into an acute licensing or permitting crisis. The long term extreme overload in The Netherlands makes it very difficult for the Dutch authorities to motivate that a small increase of nitrogen deposits will not adversely affect the integrity of the site concerned. There are almost no public projects without any additional nitrogen emissions. All fossil fuel driven machines and the entire Dutch cattle stock produce nitrogen. All projects producing substantial additional nitrogen emissions were subjected to permitting procedures.

With this verdict, the Dutch experienced a shocking wake up call on the dire state of Dutch nature. But, for many the politically unacceptable consequence was not the decline of Dutch nature, but the fact that construction permits for projects causing nitrogen emissions became hard to come by. Much new construction of cattle farms, industrial plants and real estate developments was blocked. For many politicians the main political problem was not the decline of natural habitats and nature, but the uncertainty about getting authorisation for construction projects.

In this - narrow minded - view, the Dutch nitrogen-issue is solved, when the legal problems surrounding permit delivery are solved. So, nitrogen was not seen as an ecological problem, but as a legal problem. There were many who still thought it possible to solve the nitrogen emissions problem without solving the ecological problem. In this view any argument is allowed to keep permit delivery going. This became known in Dutch politics as '*geitenpaadjes*', that can be translated as 'goat paths', which means forcing a way through, even when it is not allowed.

I already mentioned before that the future is uncertain.

And I tried to show that the nitrogen issue has become a conflict between permit people - entrepreneurs in the broadest sense from industry, agriculture, traffic construction etc. - and nature preservation. I will not talk much about Dutch nature people or nature lobby because there is not much left to talk about. The lobby groups for Dutch nature have mainly vanished in the Netherlands. I will come to this later on.

Many permit people demand firstly the reactivation of the permit delivery process, with discussion on nitrogen reduction to follow.

Nature preservation, however, demands that an ambitious emissions reduction is the first item on the agenda.

Who are these permit people, and what is their claim?

And who is the voice of nature preservation?

The permit people consist in the first place of cattle farmers, because they are the source of 60 % of Dutch nitrogen emissions.

The cattle farmers oppose to the inevitable strong cutback in the national livestock. In the current political landscape, they have now barricaded themselves behind the permits that they have already been granted, and refuse a reduction of the live stock.

But at the same time the real estate developers see their construction ambitions blocked. Moreover, the Dutch government has the ambition to build a million new houses by 2030. Although real estate construction is not the main cause of nitrogen emissions, they are not free of emissions either. Real estate developers now see their ambitions frustrated by the cattle farmers refusing to budge. The permit people are taking each other hostage.

This stalemate necessitates a political debate about the question: who owns the project permits once they are granted? Once granted, do they remain public property, which means that the government remains in control and is able to revoke or change the permits? Or do they become a form of private property, that belongs to the permit holder, once granted?

Most permit holders, first and foremost the cattle farmers, now claim "once granted is for ever granted".

And the majority of Dutch politicians follow this claim. And it is easy to understand that accepting this claim makes emissions reduction harder to reach, or at least extremely expensive to solve. It gives permit holders a position from which to demand the highest price in order to hand over their permit.

Of course this raises the question, doesn't Dutch law allow the government to revoke permits in urgent matters? Well, yes it does indeed. But the majority of the politicians fear angry permit holders. Many politicians now choose to plunder the public treasury to pay off or buy out farmers instead of standing firm, and using their competence to develop a fair policy to bring about a reduction in permits. Even talking about such a policy until now has been taboo in Dutch politics. Up to today the Dutch government has left the way open for the claim that granted permits have become akin to private property.

This brings us to the question: who is at the moment the voice of nature preservation in the Netherlands? To be clear: the voice of nature in the Netherlands is mostly silent. And this observation is also the main explanation for why the PAS in 2015 was able to be enacted in the Dutch parliament in the first place.

The explanation as to why the nitrogen emissions issue has nonetheless become a major political issue, is due to ecological scientists on one hand, who have persisted in patiently and steadfastly reporting the severe damage done to Dutch nature; and on the other hand, the rule of law, more specifically, the European Habitat directive, which has been an effective tool to hold the Dutch government to account.

I mentioned that today the people standing up for nature or the nature lobby is non-existent in the Netherlands. Certainly, there are still some courageous local groups of civilians trying to raise their voices on behalf of the interests of nature. But on the national level, this voice is mostly muted.

In the Netherlands, the most important independent nature organisation, vereniging Natuurmonumenten has about 800.000 members and oversees approximately 100.000 hectares of natural areas. In the public view, this association is seen as an NGO working on nature preservation, but on a closer look this association acts more like a recreation company. Moreover it is highly dependent on public subsidies. This organization - or I'd better say company - turns its back on any politically controversial issue relating to nature.

If vereniging Natuurmonumenten doesn't take a stand within the political landscape, as a consequence it becomes very difficult for others to do so as well. On the other hand there have been many public protests against a nitrogen reduction policy, mainly organized by farmers with hundreds of tractors blocking highways, starting fires and intimidating politicians. But none - zero - were the public manifestations to conserve Dutch nature. And, as we know, nitrogen sensitive natural areas like the White dunes or bird species like the Gray heron are fully unaware of their right to demonstrate.

Some Dutch politicians expressed their strong concern about the lack of a voice of nature in the political debate.

In the Netherlands we face a public that is mainly silent on the need to protect nature, in combination with a government which gives free rein to the claim that permits, once granted, can be treated as private property. Litigation about permits has in the Netherlands become the political focal point of nature preservation. This situation is strongly undesirable, and it makes clear the very weak public support for preservation of nature. In a situation where litigation for the preservation of nature has become the last hope, pressing public questions need to be asked about our relationship to biodiversity.

My conclusion is that NGO's who claim to speak on behalf of nature have an obligation to reconsider their mandate.

And politicians who give free rein to the position that permits can be claimed as private property have to ask themselves if they are the right people to govern the country.

Some final words about the spill over impact of The Dutch nitrogen case outside the Netherlands. In my observation law courts in general have poor access to ecological knowledge. Which is easy to understand when realising the general poor access to the best ecological scientific knowledge. Judges need to be flooded with accessible scientific information about the state of nature, focussing on the question if it is sufficiently proven by the authorities that the often small additional impact of the litigated project does not adversely affect the integrity of the site concerned. The burden of proof is with the authorities.