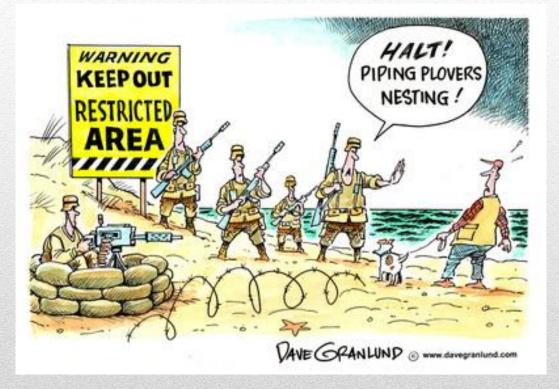
DYNAMIC NATURE MANAGEMENT AND TEMPORARY NATURE – COMPARATIVE ANALYSIS

Hendrik Schoukens Universiteit Gent 11 december 2017

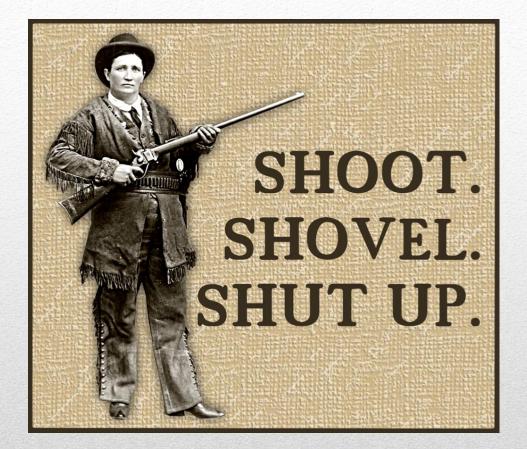




Classic approach



Strict species protection



Perverse incentives

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Newt fencing

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Volume 37, Iss	ue 2 April 2003 , pp. 194-205	Cited by 153 Get access
Reconcil	iation ecology and the future of species	diversity
Michael L. Rose https://doi.org	nzweig ^(a1)	
Abstract	Species-area relationships (SPARs) dictate a sea change in the strate three ecological scales: Sample-area SPARs (a larger area within a b	

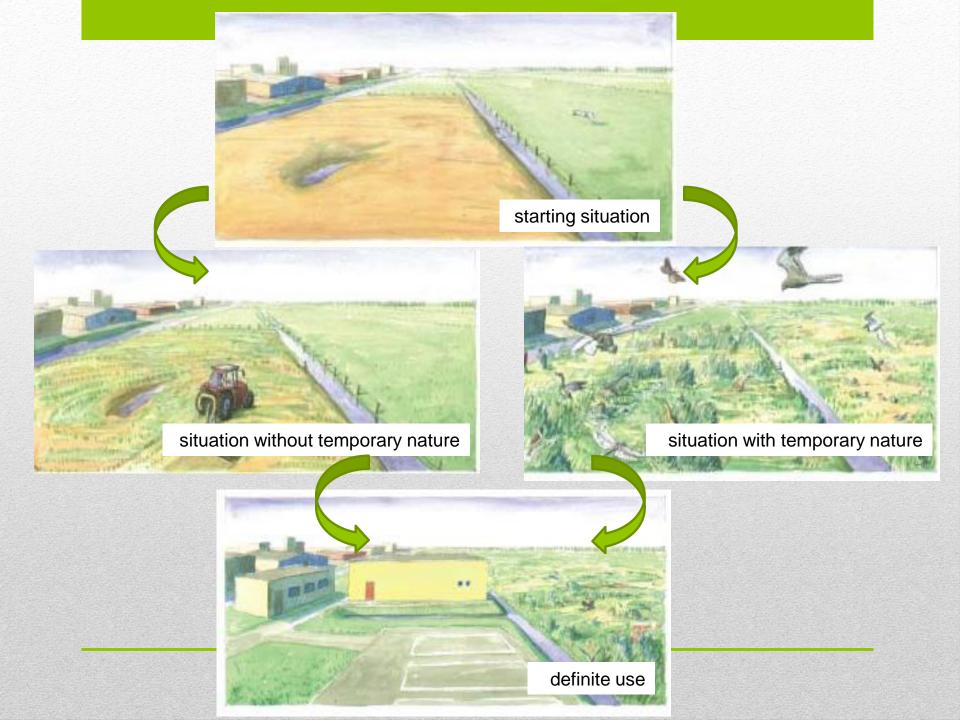
species are a relationships (SFARs) dictate a sea change in the strategies of biodiversity conservation. SFARs exist at three ecological scales: Sample-area SPARs (a larger area within a biogeographical province will tend to include more habitat types, and thus more species, than a smaller one), Archipelagic SPARs (the islands of an archipelago show SPARs that combine the habitat-sampling process with the problem of dispersal to an island), and Interprovincial SPARs (other things being equal, the speciation rates of larger biogeographical provinces are higher and their extinction rates are lower, leading to diversities in proportion to provincial area). SPARs are the products of steady-state dynamics in diversity, and such dynamics appears to have characterized the earth for most of the last 500 million years. As people reduce the area available to wild species, they impose a linear reduction of the earth's species diversity that will follow the largest of these scales, i.e. each 1% reduction of natural area will cost about 1% of steady-state diversity. Reserving small tracts of wild habitat can only delay these reductions. But we can stop most of them by redesigning anthropogenic habitats so that their use is compatible with use by a broad array of other species. That is reconciliation ecology. Many pilot projects, whether intentionally or inadvertently espousing reconciliation ecology, are demonstrating that it can be done.

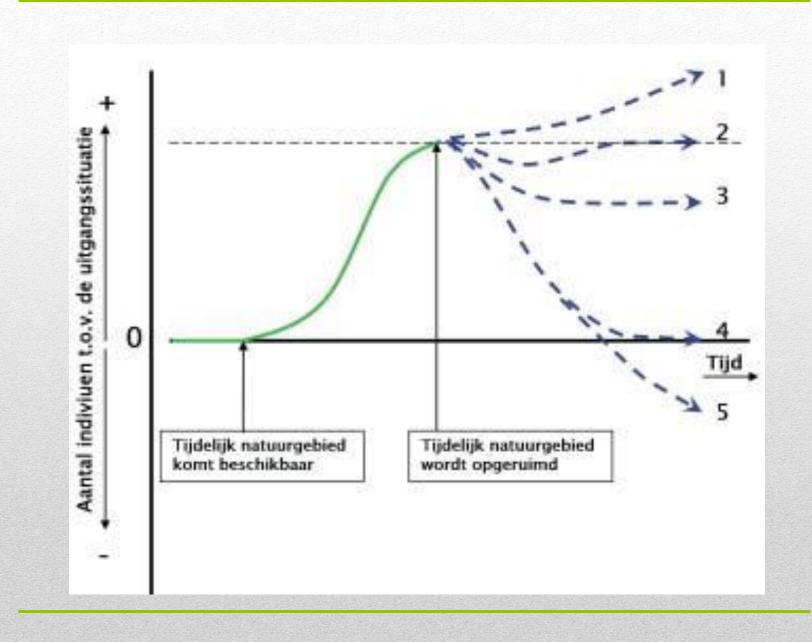
Reconciliation ecology

- United Kingdom
- Sweden
- The Netherlands
- France
- Flemish Region
- USA
- Switzerland
- Germany

Countries studied

1) ADDITIONAL NATURE – TEMPORARY NATURE/SAFE HARBOR





- Win-win scenarios: *temporary nature* provides incentives for landowners to use their lands for ecological purposes awaiting development
- **Dutch roots:** legal and ecologica research on how to reconcile nature conservation with urban development
- **Targets:** aimed at *pioneer species* that quickly colonise barren soil habitats, such as construction lands, sand heaps or reclaimed port areas these conditions almost nowhere to be found in other parts of the landscape

Shaking up the habitual

- legal guarantees *before* species settle: apply in advance for a derogation before the area is made available for biodiversity
- ask in advance the consent of the competent authority for the removal of temporary nature (more legal certainty) if rejected, no liabilities ...<> if approved, permit defence
- legal underpinnings: Article 16(1)(a) of the HD: 'provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the population of the species concerned at a favourable conservation status, MS may derogate (...) in the interest of protection wild fauna and flora and conserving natural habitats'

Single act derogation

- Definition
- Territorial scope
- Procedure
- Duration
- Monitoring
- Mitigation
- Management



Martin Melchers beheert de tijdelijke natuar op de braakliggende haventerreinen van Amsterd

Natuur en economie staan vaak lijnrecht tegenover elkaar. Onze noorderburen hebben een prima compromis uitgedokterd: dieren en planten mogen zich ongestoord ontwikkelen op braakliggend terrein, maar bij exploitatie moceten ze 10079 STARTINA TREVENTER TREATER NAMES IN TREVENTER TREATER NAMES IN TREVENTER TREATER NAMES IN TREATER IN TREATER TREATER NAMES IN TREATER TREAT

entettijke regeling die in die annde 2006 in vooge teelaat dat op braakligenter ander op braakligenter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander - wordt aatwikkelig ander en tijdelige enter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander enter ander - zogeraamde 'tijdeligenter ander enter ander enter ander enter ander - zogeraamde 'tijdelig-- ander enter ander enter ander enter ander - zogeraamde 'tijdelig-- ander enter ander enter ander enter ander - zogeraamde 'tijdelig-- ander enter ander enter ander enter ander - zogeraamde 'tijdelig-- ander enter ander enter ander enter ander enter ander enter ander - zogeraamde 'tijdelig-- ander enter ander - zogeraamde 'tijdelig-- ander enter ente

Wiji staan tiddige namera te popelen' Zo'e unterdinge schillende bedyteer in om Normalise schillende bedyteer werde regeneraties fan om of bedyteer on te schillende bedyteer schil De regeling blijkt een succes bij n onze noorderburen. Inniddels g groeit en bloet ter al op meer dan o 2.000 hertare tijdelijke natuur. It maar ook konvegrenden van prokontortekheinars die door de ingestoette haizenmarkt in Nederhant gestoette haizenmarkt in Nederhant gestoette haizenmarkt in Neder-

Tempo

concept eerst duidelijk moet worden afgebakend om perverse effecten te voorkomen. "Tijdelijke natuur moet altijd worden be-

In een context waarin natuur en economie vaak onverzoenlijk lijken – denk aan het beruchte Essensbos – kan tijdelijke natuur een lichtpunt zijn

attor an de lag gatt definigamente la sergenza sergen

Practicalities

- first application in 2009 court cases underpinnings accepted by Dutch Council of State (Port of Amsterdam, 2012)
- approval by EC (2014)
- revised policy guidelines in 2015 (Natura 2000)
- next stage: code of conduct?

Successes in court room



Safe harbor agreements

- a Safe Harbor Agreement is a **voluntary agreement** involving private or other non-Federal property owners whose actions contribute to the recovery of species listed Safe Harbor Program Signage as threatened or endangered under the Endangered Species Act (ESA).
- in exchange for actions that contribute to the recovery of listed species on non-Federal lands, participating property owners receive formal assurances from the Service that if they fulfill the conditions of the SHA, the Service will not require any additional or different management activities by the participants without their consent.
- at the end of the agreement period, participants may return the enrolled property to **the baseline conditions** that existed at the beginning of the SHA.

Similar reasoning

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Op de Philipssite in Turnhout wordt braakliggende bedrijfsgrond tijdelijk omgevormd tot natuurgebied. Een primeur voor Vlaanderen.

Laat het gras maar groeien (op het bedrijventerrein)



De graslanden op de Philipssite zulien tweemaal per jaar begraasd worden door schapen. Die dragen in hun vacht zaden mee van inheemse planten, die waardevolke soorten zulien lokken, zoals Oppk

More countries to follow?



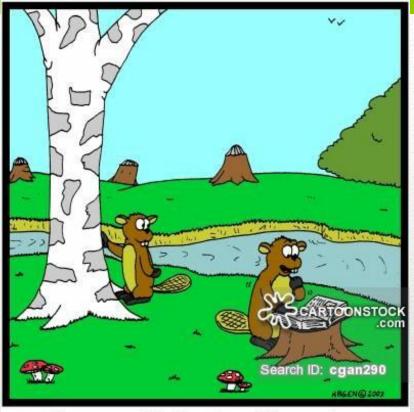
Proposed new policies for European Protected Species licensing

More countries to follow (II)?

- additional nature vs compensation
- adequate baseline
- ecological trap
- monitoring
- Management obligations (?)

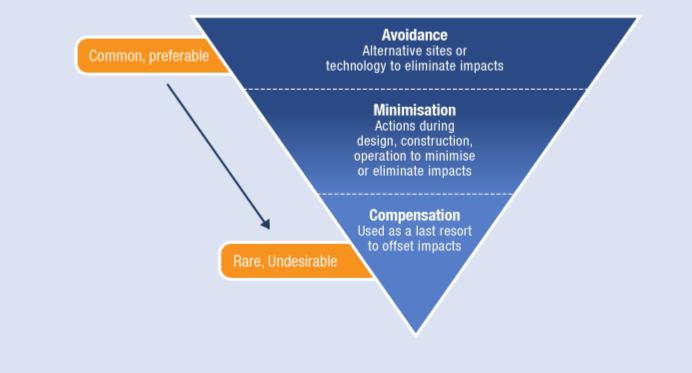
Caveats

2) PERMANENT ADDITIONAL NATURE – SPECIES ACTION PROGRAM/HABITAT BANKING

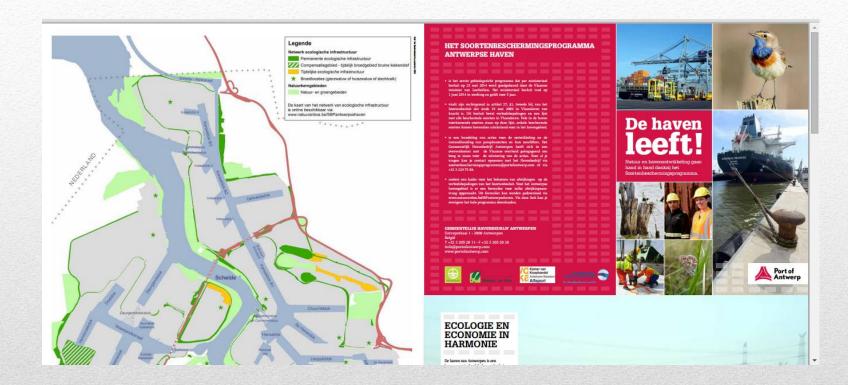


Hang on, we'd better leave this one alone: it's a protected species...

Focus on individual specimens EPS



Mitigation vs compensation



Population-based approach

- species protection program: collection conservation measures aimed at FCS one specific species/group of species – ecological functionality
- **flexibility:** possible to include derogations in advance + tailormade approach to species conservation
- Antwerp Port Area: adaptive managament conservation measures for keystone species - individual assessment at project level (still individual derogation) <> Dutch approach: generic derogations whenever area-wide conservation measures aimed at FCS are established?

Legal implementation ?

- Article 16(1)(e) HD: 'to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities'
- EC Guidance Strict Species Protection (2007) species management plans (hunting) → spatial interventions + in line with objective/goal of EU Nature Directives

Legal basis?

- Habitat conservation plan (HCP) is is a required part of an application for an ITP, a permit issued under the United States ESA to private entities undertaking projects that might result in the destruction of an endangered or threatened species.
- a **planning document** that ensures that the anticipated take of a listed species will be minimized or mitigated by conserving the habitat upon which the species depend, thereby contributing to the recovery of the species as a whole

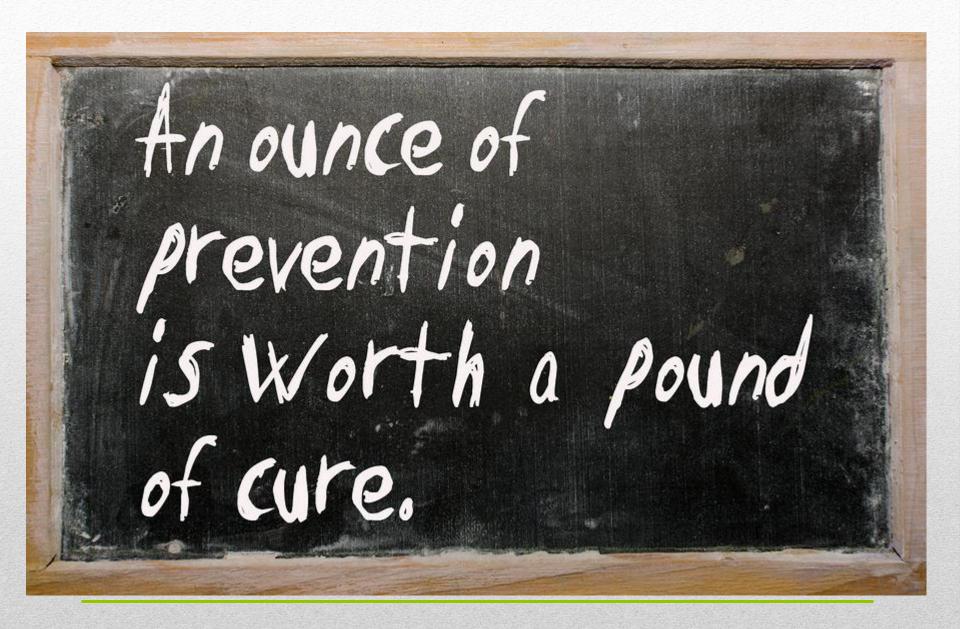




- comprehensive approach no explicit derogation grounds?
- sound scientific underpinnings FCS: only for pioneer and early species?
- landscape-oriented vs keystone-species linked to economic activity?
- administrative burden SMEs?
- approval by competent authorities legal challenges?
- encroachments upon nature somehow limited in scale and size – attractive enough?

Caveats

3) PERMANENT NET LOSS – TRADITIONAL DEROGATION CLAUSES



- <u>no</u> derogation ecological functionality limited margins > legal uncertainty
- alternatives assessment focus on less harmful alternatives
- justification grounds IROPI (limited room for private interets)
- compensation measures in advance effective + ensure ecological functionality
- ad hoc-approach <> area-oriented approach (species banking)?

Legal basis?

4) CONCLUSION

- main conclusion: strict preventative approach + limited room for derogation
- yet still some leeway for flexible approach for:
 - additional temporary nature: single act-derogation (NL/FL/UK/USA/SWI)
 - additional permanent nature: population-based management plan serves as derogation (FL/NL/UK/SWE/USA/FRA)
 - net loss of permanent nature: ad hoc and/or integrated in management plan (banking) (FL/NL/USA)

