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MENU

- Short introduction in European conservation law
- Strictly protected beavers
 - Dealing with beavers
- Discussion on dilemma's and possibilities of dealing with the beaver within the legal framework

Luuk Boerema, specialized in nature conservation law and law concerning animals.





European law

- *Secondary European law on Nature Conservation*
- *Regulation: e.g. Nature Restoration Law (2024)*
- *Directives: e.g. the Habitats (1992) and Bird directives (1979)*

- * *All aim at a high level of protection*
- * *European Commission as a watchdog*
- * *European Court of Justice has final say in interpreting regulations*

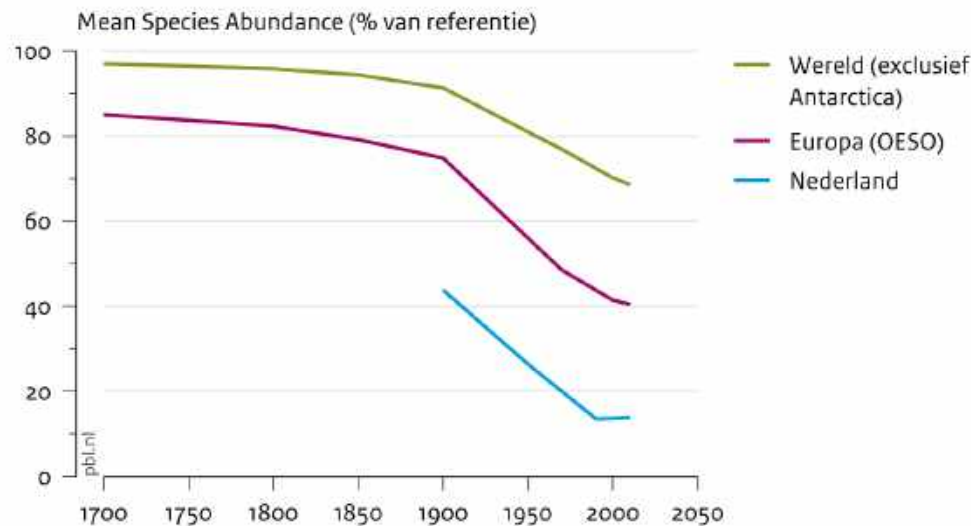




European law

- *Europe aims at a high level of protection of nature*
- *The protection of natural species and habitats is aimed at regaining or conserving a favourable conservation status of habitats and species.*

Biodiversiteit





Pressures on EU biodiversity



Source: State of Nature 2020





European law

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Legal protection:

**** Beaver is an Annex IV species (strictly protected)***

**** Beaver is an Annex II species (Natura 2000 SPA, and conservation objectives)***





Some recent headlines concerning the beaver in the Netherlands:

- * Beaver holes threatening dikes along the Maas and Waal rivers*
- * Dutch water authorities struggle with rising beaver damage*
- * Burrowing beaver causes flood risks*



** Beaver holes threatening dikes along the
Maas and Waal rivers*





Obligations to protect the beaver

Art. 12. Habitatsdirective

Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;*
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;*
- (c) deliberate destruction or taking of eggs from the wild;*
- (d) deterioration or destruction of breeding sites or*





Exemptions:

Art. 16 Habitats directive

Permits can be granted tot derogate from these prohibitions:

1) if necessary, to prevent serious damage on crops and properties, in the interests of public health and public safety, or for other imperative reasons of overriding public interest, in the interest of protecting wild fauna and flora and conserving natural habitats;

1) Provided that there is no satisfactory alternative;

2) and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range





Exemptions:

- *The system of strict protection of species by prohibitions according to the Habitats Directive sees on the protection of the individual of the species.*
- *Whether or not exemptions can be made depends on the specific circumstances and the weighing of the factors mentioned in art. 16 of the Directive.*

See judgment of 11 July 2024, Umweltverband WWF Österreich, wolf 158MATK, Case C-601/22, ECLI:EU:C:2024:595



** Beaver holes threatening dikes along the Maas and Waal rivers*

What to do?

** Taking beavers out of the territory and releasing them elsewhere?*

** Culling?*

** Destroying their breeding sites / restingplaces?*



*** Beaver holes threatening dikes along the Maas and Waal rivers**

From rulings from the EU Court of Justice:

- Killing protected species is a 'last resort';*
- Prevention is key;*
- Article 12(1) of the Habitats Directive cannot be interpreted as meaning that the protection which that provision affords ceases to apply to species which have achieved a favourable conservation status.*

(See, judgment of 4 March 2021, Föreningen Skydda Skogen, C-473/19 and C-474/19, EU:C:2021:166, paragraphs 65 and 66).



*** Beaver holes threatening dikes along the Maas and Waal rivers**

How to weigh the alternatives (I) :

- From rulings from the EU Court of Justice:

It is for the competent national authorities to establish, that there is no satisfactory alternative that can achieve the objective pursued.

(See: judgment of 10 October 2019, Luonnonsuojeluyhdistys Tapiola, C-674/17, EU:C:2019:851, paragraphs 49 and 51)

*** What is the objective pursued in our beaver case?**



*** Beaver holes threatening dikes along the Maas and Waal rivers**

How to weigh the alternatives (II) :

- From rulings from the EU Court of Justice:

The assessment of alternatives requires a balancing of all the interests involved and the criteria to be taken into consideration, such as ecological, economic and social advantages and disadvantages, in order to determine the best possible solution.

*- taking account, in particular, of their economic implications,
without those implications being decisive;*

(See judgment of 11 July 2024, Umweltverband WWF Österreich, wolf 158MATK, Case C-601/22, ECLI:EU:C:2024:525)





Discussion: How to prevent floodings or the risk for public safety and respect the protection of the beaver?

- *What will be the best solution for having the beaver around without (or with a minimum of) risk for the public safety, within the framework of the Habitatsdirective?*





How to prevent floodings and respect the protection of the beaver?

- *What is the 'best possible solution'?*
- *What about the economic costs?*
- *'Beaver not welcome' zoning: is that possible under within the law?*
- *Monitoring hotspots, managing hotspots: calamity intervention only?*
- *Taking preventional measures: is that possible and on what scale?*
- *Population management (culling): is that possible within the law?*
- *Luring beavers away (seducing and deterring)*



