

## Policy webinar Protection of Subtidal Nature, Wadden Sea, 24 September 2021

The Dutch Program to a Rich Wadden Sea (PRW) organized a webinar on September 24 on how the three Wadden countries have implemented the European directives for the protection of the subtidal nature of the Wadden Sea.

In a joint preparation prepared by the National Parks Wadden Sea of Schleswig-Holstein and Lower-Saxony, Gregor Scheiffarth from the latter presented an overview of the subtidal species and habitats that are legally protected in the German Wadden Sea. Henrik Pind Jorgensen from the Danish Ministry of Environment explained how the "Big Four": N2000, Water Framework Directive, Marine Strategy Directive and Marine Spatial Planning Directive are used to protect subtidal nature within Denmark. Nina Fieten, working at consultancy Altenburg and Wymenga, informed the attendees about protection issues in daily practice in the Dutch situation. The webinar was chaired by Bernard Baerends, executive secretary of the Common Wadden Sea Secretariat.

Kees Bastmeijer, professor of nature conservation and water law at Tilburg University and member of the Dutch Wadden Academy, reflected comprehensively on the outcomes at the end of the webinar and a summary of his conclusions is presented below.

### 1. Rich marine subsurface, poor protection.

The high biodiversity of the area as demonstrated especially in Gregor Scheiffarth's presentation, contrasts with the limited number of species for which area protection is mandatory through Annex 2 of the Birds and Habitats Directive.

There are differences between countries. For example, in Germany and Denmark, reefs are explicitly and separately mentioned as a habitat type to be protected, while this is missing in the Dutch approach.

The European Court of Justice recently ruled that typical species and habitat types also fall under the regime of Article 6 of the Habitats Directive. A proper assessment should therefore also apply to typical species, which is not always the case.

It is interesting to note that based on the same legislation, the way of implementing is quite different.

### 2. Not just EU directives

It may be useful to make better use of other regulations such as OSPAR, the Red List of Threatened and Protected Species and specific conventions. Conventions such as the Convention on Migratory Species and the Eel Convention are extremely important.

### 3. EU legislation: minimum or maximum approach.

Germany and Denmark have introduced a special Wadden Sea Law in addition to the EU directives. They consider the EU legislation to be a minimum, while the Netherlands strictly adheres to the EU requirements.

#### 4. MSFD

In Denmark, the Marine Strategy Framework Directive (MSFD) is the main legal instrument for the Wadden Sea. In Germany, the MSFD complements the other directives.

The Netherlands has decided to exclude the Wadden Sea from the MSFD. Both Germany and Denmark argue for the added value of the KRMS: a holistic and ecosystem-based management approach, which ensures connection to OSPAR and other international conventions.

#### 5. Practice

Apart from the legal framework, in all three countries decision-making on major projects with an impact on the Wadden Sea is mostly about where, how and when, rather than yes or no. This is not in line with the "no, unless" approach as required by Natura 2000. The issue of assessing cumulative impacts is rarely properly addressed, despite the official obligation.

#### 6. Undisturbed areas

Following a trilateral agreement, the three countries have designated undisturbed areas. These areas are important to ensure a functioning ecosystem and can also help us to investigate how to adapt to the climate. However, there is a general reluctance to designate such areas at an appropriate scale. This is worrying, considering that already in 1991 in the Esjberg Declaration it was stated that the countries will strive to designate sufficiently large areas, equally distributed over the Wadden Sea to ensure a proper connection, where exploitation and disruptive activities are prohibited and which can serve as reference areas for scientific purposes.

#### 7. Restore

There must be an eye for what we have lost, for example the European sturgeon for which the Wadden Sea was a very important area. The last catch of a wild European sturgeon in river systems was in 1953 in the Netherlands. It is a species that is listed in many conventions and there is actually an obligation to study the possibilities of reintroducing that species. But should we return to the previous situation or should we accept the changes due to climate change as they are now?

During the webinar, many suggestions were made for intensifying trilateral cooperation, such as mapping natural values, ecotopes or habitats, designating MP's outside the Wadden Sea and using non-legally binding instruments, exchange of best practices on impact assessment studies with regard to e.g. the increasing pressure on the Wadden Sea due to the energy transition phase, and using results of the undisturbed areas.

The Chair thanked the presenters, the organisers and all participants and concluded that the webinar provided a rich harvest. This harvest will be submitted to the trilateral monitoring workshop on subtidal habitats, the Trilateral Group on Monitoring and Assessment organizes in November 2021. It may also be useful to consider updating the 2010 Wadden Sea Plan based on these new insights and, in addition, to consider this in the framework of the upcoming Trilateral Governmental Conference in 2022.