

# **BIODIVERSITY LOSS: ACHIEVING THE EXTRAORDINARY BY PROTECTING AND RESTORING THE ORDINARY**


Hendrik Schoukens

2020 – Challenges for Environmental Law

5 February 2019



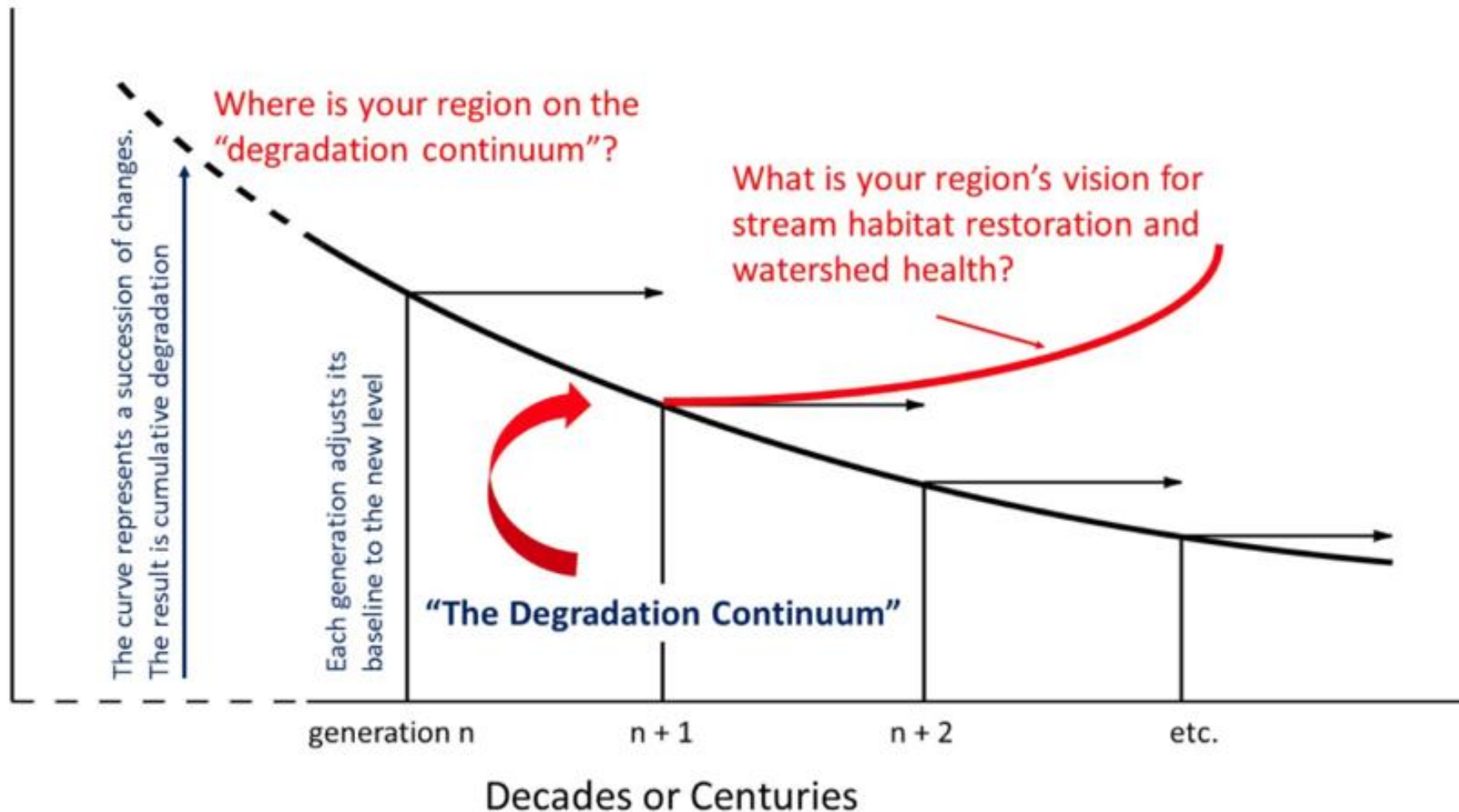
UNIVERSITEIT  
GENT



**HOW **ORDINARY** NATURE IS  
DISAPPEARING BEFORE OUR  
OWN EYES – A PERSONAL  
TESTIMONY...**

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**Some Good Thing = Driver for Action**  
(Aquatic Habitat, Salmon, Clean Water or...)



# Shifting baseline syndrome





This is where I live...



- Countryside
- Fragmented woodlands
- Urban sprawl
- Dominance of large-scale agricultural practices



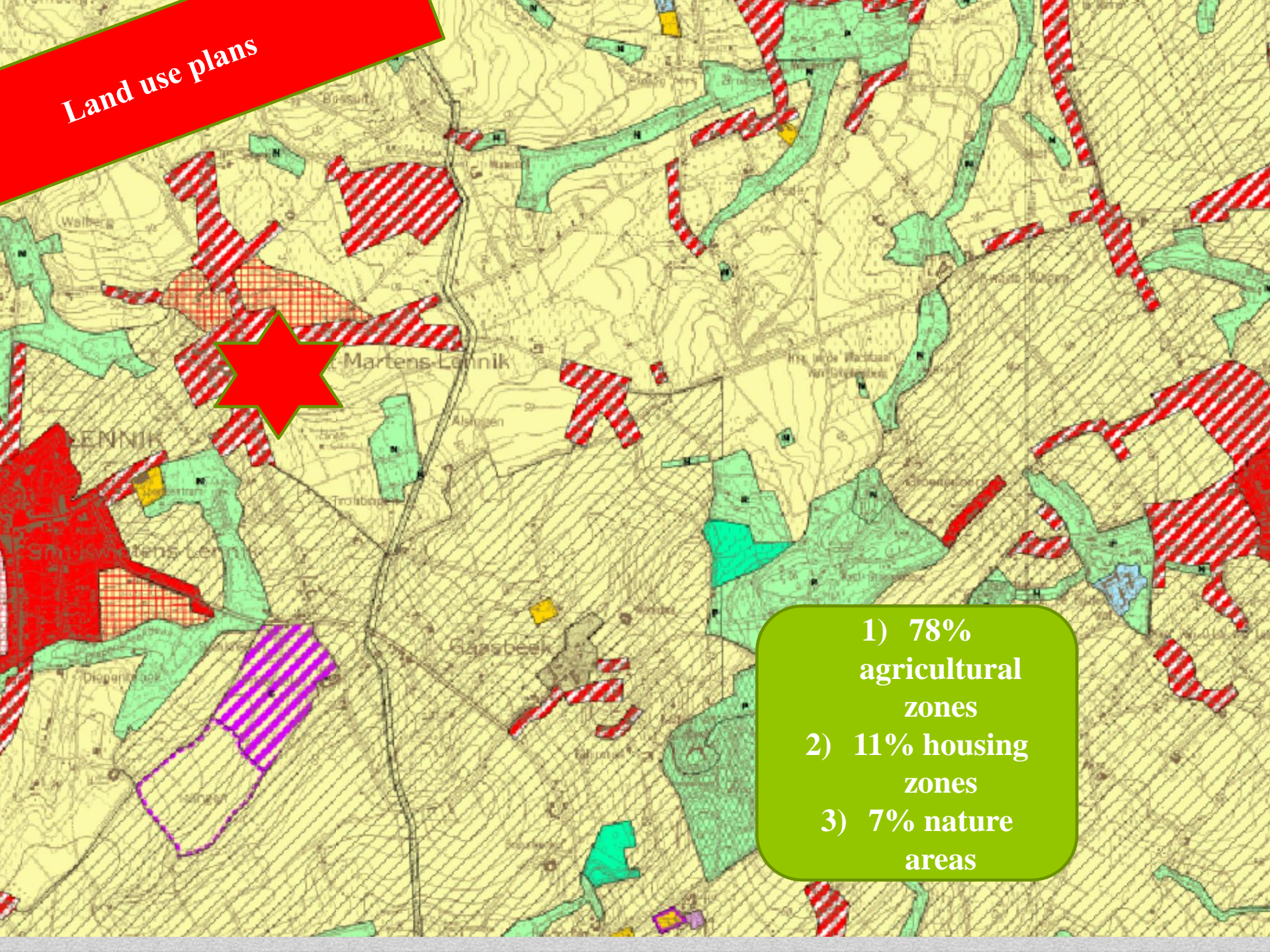
Some protected sites



- 1) Natura 2000 sites
- 2) Flemish Ecological Network







- 1) 78% agricultural zones
- 2) 11% housing zones
- 3) 7% nature areas



More nature on the ground?



1

2

3

4



**Case no 1: let's drain the swamp!**

1





**Before (July 2017)**





After (August 2018)





**Impending eco-disaster?**



Let's level up a pasture

2





**Dying trees**







**After (January 2018)**





**After (January 2018)**



**A perfect soccer pitch!**





Urban nature

3





And ... it's gone!





Old fruit trees on a pasture

4





... are gone!



Google



- **land use plans:** no priority/proper integration of ecological concerns?
- **protected sites:** not part of a protected area, nor was the site included in a nature reserve – limited potential!
- *bonus pater familias*: general duty of care towards nature yet **no general ban** on harmful interventions in ‘ordinary’ nature
- **no net loss in case of planning permit applications:** neither a general assessment of ecological damage was produced, nor were offsets made mandatory
- **strict protection:** a relatively unknown ban on the alteration of marshlands and swamps (unless derogation is obtained) – no comprehensive (ecosystem) protection and poorly enforced

# Legal analysis

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# Warning of 'ecological Armageddon' after dramatic plunge in insect numbers

**Three-quarters of flying insects in nature reserves across Germany have vanished in 25 years, with serious implications for all life on Earth, scientists say**



▲ Flying insects caught in a malaise trap, used by entomologists to collect samples. Photograph: Courtesy of Entomologischer Verein Krefeld

The abundance of flying insects has plunged by three-quarters over the past 25 years, according to a new study that has shocked scientists.





## **2) HOW DID WE END UP HERE – SHIFTING BASELINES?**

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### **Target 11**

By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.



### **Target 5**

By 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced.

# **Progressive and ambitious targets?**

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5. *Recognizes* the efforts made by Parties to translate the Aichi Biodiversity Targets into national commitments and actions, but *notes with concern* the findings of the updated assessment of progress<sup>6</sup>, in particular:

(a) For most of the Aichi Biodiversity Targets, there has been limited progress, and, for some Targets, no overall progress;

(b) Only a limited number of Parties have adopted their national biodiversity strategies and action plans as whole-of-government policy instruments;

(c) Only a limited number of national biodiversity strategies and action plans contain resource mobilization strategies, communication and public awareness strategies, or capacity development strategies, as the guidance for national biodiversity strategies and action plans suggests;

(d) Only a limited number of national biodiversity strategies and action plans demonstrate that biodiversity is being mainstreamed significantly into cross-sectoral plans and policies, poverty eradication policies, and/or sustainable development plans;

6. *Notes* that some Parties have integrated their national biodiversity strategies and action plans into other national environmental and development strategies and that this can facilitate more effective resource mobilization and communication;

# Versus reality

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## Article 3. Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

## Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

# (1) CBD – vague and non-binding provisions targets

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## SHARE REPORT

## One-third of global protected land is under intense human pressure

Kendall R. Jones<sup>1,2</sup>, Oscar Venter<sup>3</sup>, Richard A. Fuller<sup>4,5</sup>, James R. Allan<sup>1,2</sup>, Sean L. Maxwell<sup>1,2</sup>, Pablo Jose Negret<sup>1,2</sup>, James...

\* See all authors and affiliations

Science 18 May 2018  
Vol. 360, Issue 6390, pp. 788-791  
DOI: 10.1126/science.aap9565

Article Figures &amp; Data Info &amp; Metrics eLetters PDF

## Protected yet pressured

Protected areas are increasingly recognized as an essential way to safeguard biodiversity. Although the percentage of land included in the global protected area network has increased from 9 to 15%, Jones *et al.* found that a third of this area is influenced by intensive human activity. Thus, even landscapes that are protected are experiencing some human pressure, with only the most remote northern regions remaining almost untouched.

Science, this issue p. 788

## Abstract

In an era of massive biodiversity loss, the greatest conservation success story has been the growth of protected land globally. Protected areas are the primary defense against biodiversity loss, but extensive human activity within their boundaries can undermine this. Using the most comprehensive global map of human pressure, we show that 6 million square kilometers (32.8%) of protected land is under intense human pressure. For protected areas designated before the Convention on Biological Diversity was ratified in 1992, 55% have since experienced human pressure increases. These increases were lowest in large, strict protected areas, showing that they are potentially effective, at least in some nations. Transparent reporting on

Nieuws &gt; Binnenland

UPDATE

Limburgse deputatie levert  
bouwvergunning af voor transportbedrijf  
Essers

02-02-17, 14.33u - Bron: Belga



© BELGA



Protesters march against logging last August in the Białowieża Forest. CZAREK SOKOLOWSKI/ASSOCIATED PRESS

## Logging in Europe's primeval forest ruled illegal

By Erik Stokstad | Apr. 18, 2018, 5:45 PM

Europe's top court has **ruled** that controversial logging in Poland's iconic Białowieża Forest is illegal, but the fight over the forest's future is far from finished. "The controversy over what to do next is just beginning," says ornithologist Przemek Chylarecki of the Polish Academy of Sciences in Warsaw.

# (2) Paper protected sites – no strict management and protection



## Article 14. Impact Assessment and Minimizing Adverse Impacts

Index

1. Each Contracting Party, as far as possible and as appropriate, shall:

- (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;
- (b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;
- (c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;

16

To that end, the nature of the rule breached must be taken into account. In the present case, that rule prescribes an assessment of the environmental impact of a public or private project, but does not lay down the substantive rules in relation to the balancing of the environmental effects with other factors or prohibit the completion of projects which are liable to have negative effects on the environment. Those characteristics suggest that the breach of Article 3 of Directive 85/337, that is to say, in the present case, the failure to carry out the assessment prescribed by that article, does not, in principle, by itself constitute the reason for the decrease in the value of a property.



## The paradox of strategic environmental assessment

Morten Bidstrup , Anne Merrild Hansen 

 Show more

<https://doi.org/10.1016/j.eiar.2014.03.005>

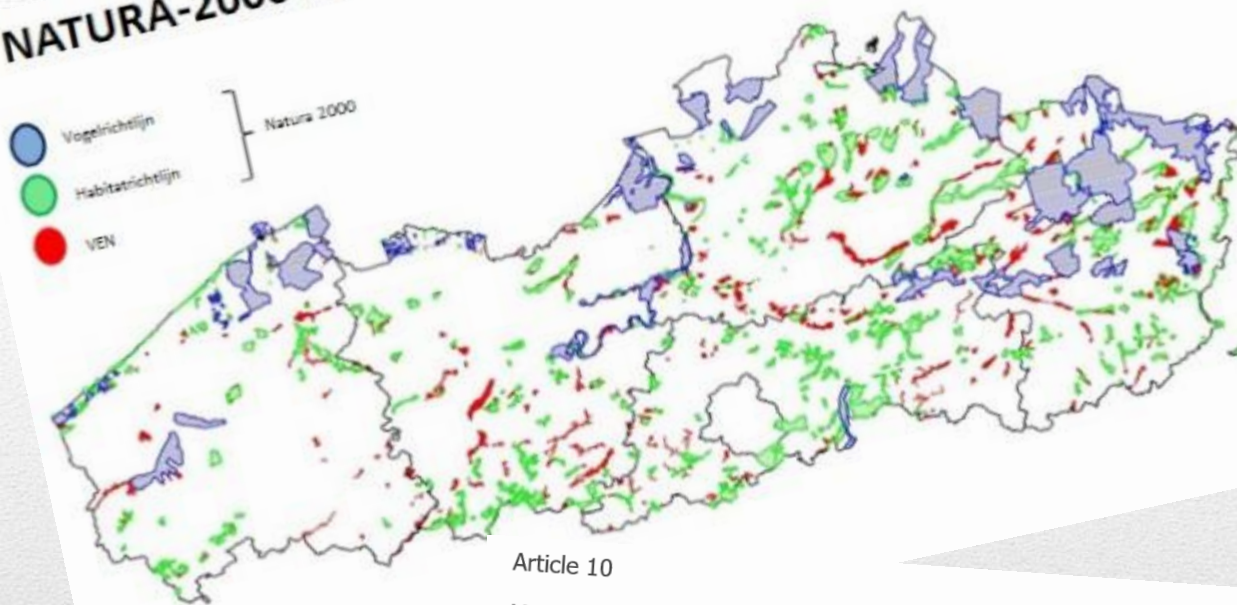
### Highlights

- International studies conclude that SEAs are not strategic. = SEA.
- Even on the highest managerial level, some contexts do not strategy.
- Non-strategic SEA can derive from challenged documentation.
- Descriptive and emergent strategy formation can, in practice, non-strategic.

# (3) NO GENERAL BAN, EIA= EFFECTIVE PROCEDURE?



## NATURA-2000 in Vlaanderen



### Article 10

Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora.



# **(4) EU HABITATS AND BIRDS DIRECTIVE ARE NOT AIMED AT PROTECTING ORDINARY NATURE**



## Can the 'greening' be greener?

New evidence shows that the 'Ecological Focus Areas' introduced under the EU's Common Agricultural Policy (CAP) greening rules can provide a lot more, for both nature and farmers

Date: January 11, 2015

Source: Helmholtz Institute for Environmental Research - UFZ

Summary: The EU's greening measures under Article 6 of Directive 92/43 and which completely prohibit, in Natura 2000 sites, using commercial fishing gear which touches the sea bed and fixed nets, since such measures affect fishing vessels flying the flag of other Member States.

Share: [f](#) [t](#) [G+](#) [p](#) [in](#) [✉](#)

### RELATED TOPICS

#### Plants & Animals

- > Agriculture and Food
- > Food and Agriculture
- > Endangered Plants

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- > Ecology
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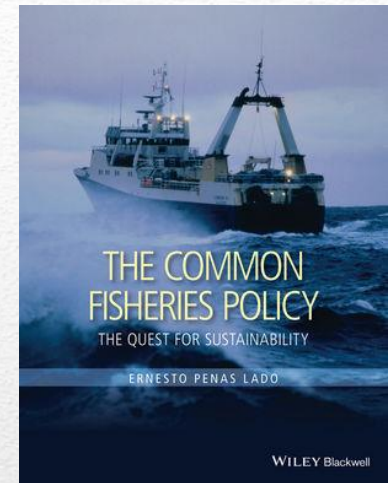
- > Land Management
- > Urbanization
- > Ocean Policy

### FULL STORY



These are hedges as ecological focus area in Germany. A biotope network for fauna and flora.

Credit: Thomas Hesse



# (5) Lack of proper integration





**(6) No (or very limited) gold-plating**

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BINNENLAND



Drijdijk, Waaslandhaven, INBO

Drijdijk, Waaslandhaven, INBO

Ben Vanheulekom  
do 12 apr 2018 16:16

## In 70 jaar tijd heeft Vlaanderen 244.000 hectare met vijvers, plassen en venen drooggelegd

Na de Tweede Wereldoorlog zijn in Vlaanderen 244.000 hectaren met plassen, meren, moerassen en venen drooggelegd voor landbouw, huizen, wegen en bedrijven. Dat

## Natuurpunt: “Minder budget voor grootste klimaatproject van Vlaanderen”

01/02/2019 om 11:34 door jvh | Bron: BELGA - [Print](#) - [Corrigeer](#)



■ Themabeeld (FOTO: IF)



De Vlaamse Waterweg wil bekibbelen op het budget van het Sigmapijn, dat Vlaanderen beschermt tegen overstromingen van de Schelde en haar

# (7) CC (mitigation and adaptation) left out of the mix?



# 3) THE WAY(S) FORWARD?

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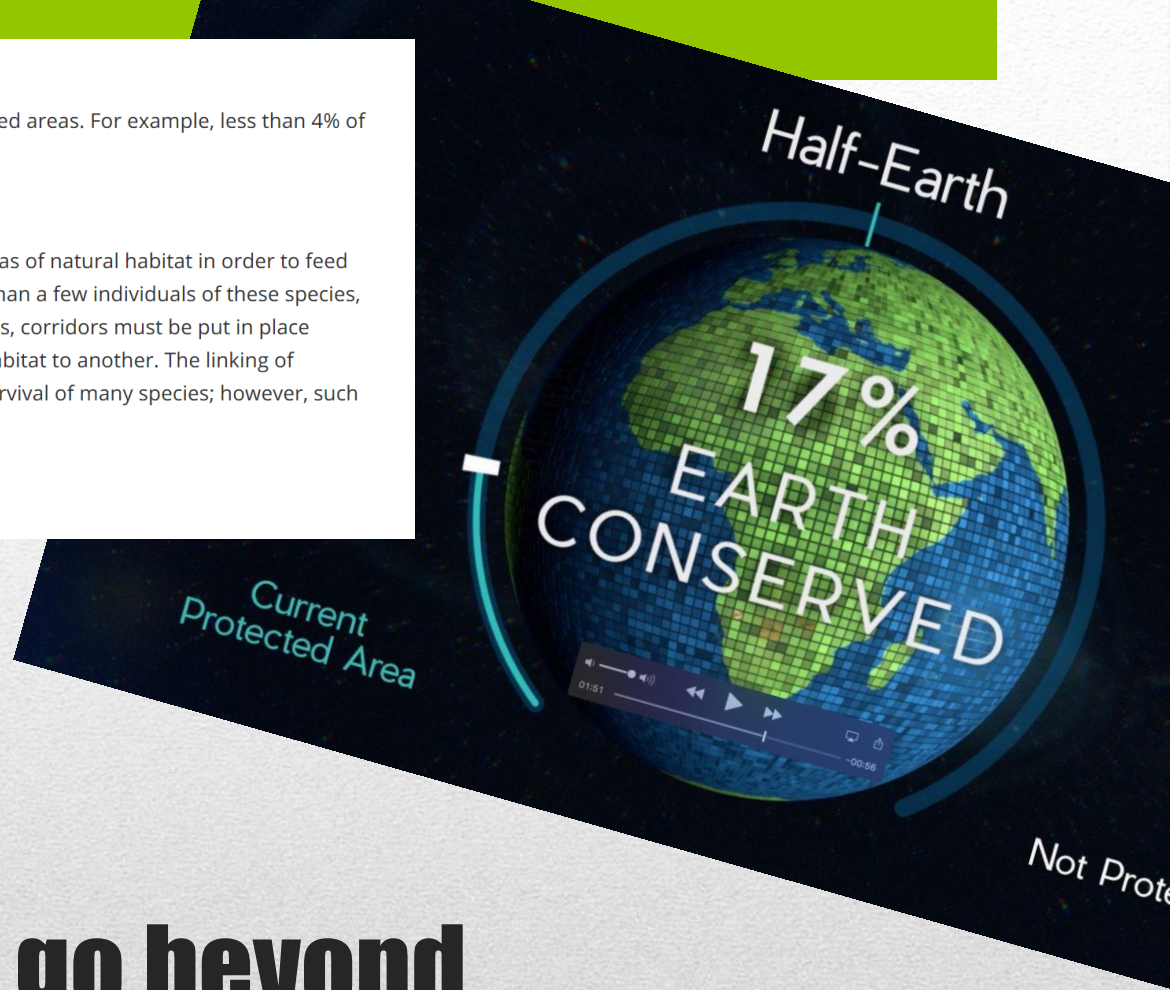


- **Poor representation of habitats**

Many habitats are not well represented in the current network of protected areas. For example, less than 4% of the ocean is protected. Freshwater habitats are also poorly represented.

- **Lack of connectivity between protected areas**

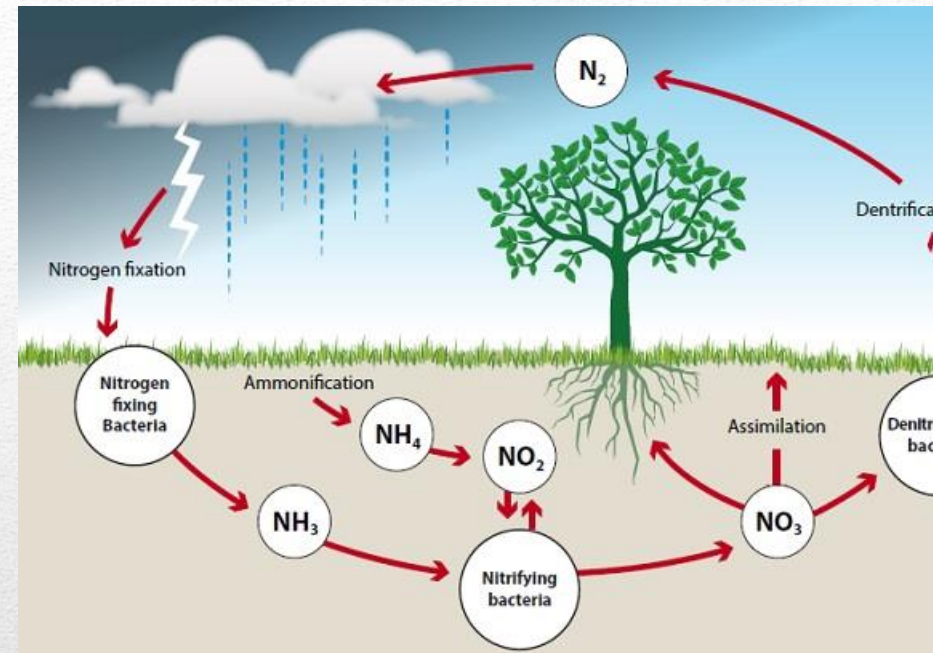
Some species, especially large animals like cats and bears, need large areas of natural habitat in order to feed and find mates. Few protected areas are large enough to support more than a few individuals of these species, and many are isolated from other areas of natural habitat. To address this, corridors must be put in place between protected areas to allow species to move from one protected habitat to another. The linking of protected areas to form networks or systems is very important for the survival of many species; however, such connectivity remains rare.



# (1) Half Earth: go beyond protected sites and include ordinary nature as corridor?

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**(2) Integrate a binding ecosystem approach in planning and other sectoral legislation**



## No Net Loss and the EU Biodiversity Strategy

The EU is committed to halt the loss of biodiversity and the degradation of ecosystem services by 2020. The [Biodiversity Strategy](#) sets out 6 targets and 20 specific actions geared towards this overall objective. Action 7 is to ensure no net loss of biodiversity and ecosystem services. The action calls for the development of a methodology to assess the [impact of EU funds on biodiversity](#) and foresees that the Commission proposes "*an initiative to ensure there is no net loss of ecosystems and their services (e.g. through compensation or offsetting schemes)*." This commitment is reiterated in the [roadmap to a Resource Efficient Europe](#).

- (11) The measures taken to avoid, prevent, reduce and, if possible, offset significant adverse effects on the environment, in particular on species and habitats protected under Council Directive 92/43/EEC <sup>(10)</sup> and Directive 2009/147/EC of the European Parliament and of the Council <sup>(11)</sup>, should contribute to avoiding any deterioration in the quality of the environment and any net loss of biodiversity, in accordance with the Union's commitments in the context of the Convention and the objectives and actions of the Union Biodiversity Strategy up to 2020 laid down in the Commission Communication of 3 May 2011 entitled 'Our life insurance, our natural capital: an EU biodiversity strategy to 2020'.

# (3) A general ban and strict offset scheme for ordinary nature

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# **(4) Thinking out of the box**

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## Welke opdracht heeft uw gemeente inzake het realiseren van een sociaal woonaanbod? Het BSO in cijfers

### Uw opdracht als gemeente: het realiseren van voldoende sociale huurwoningen tegen 2025

Het Vlaamse woonbeleid wil het sociaal woonaanbod versneld uitbreiden en geografisch spreiden. Elke gemeente kreeg daarom een **bindend sociaal objectief (BSO)** opgelegd. Binnen een vooropgestelde termijn moet de gemeente op haar grondgebied een aantal bijkomende sociale huurwoningen realiseren. Vanuit haar regisseursrol op het vlak van lokaal woonbeleid neemt de gemeente concrete initiatieven om tijdig dit BSO te behalen.

Het bindend sociaal objectief is de rechtsplicht voor de gemeente om de opgelegde doelstelling inzake bijkomende sociale huurwoningen te realiseren in de periode 2009-2025. Aanvankelijk kregen de gemeenten ook een doelstelling opgelegd inzake bijkomende sociale koopwoningen en sociale kavels te realiseren in de periode 2009-2020. Inmiddels zijn de objectieven voor sociale koopwoningen en sociale kavels opgeheven, dat gebeurde bij het decreet van 14 oktober 2016.

De nulmeting is het vertrekpunt voor uw gemeente

Op basis van de nulmeting op datum van 31/12/2007 is het deelobjectief huur per gemeente bepaald in het decreet Grond- en Pandenbeleid. Hierbij wordt rekening gehouden met het aantal huishoudens die een gemeente op haar grondgebied had op 1/1/2008. Een gemeente met 9% sociale huurwoningen op haar grondgebied kreeg geen deelobjectief huur. Een gemeente met minder dan 3% sociale huurwoningen kreeg een specifieke inhaalbeweging.

 [De cijfers van de nulmeting 2007](#)



WONEN IN EIGEN STREEK ALLEEN VOOR LAGE INKOMENS

## Dubbele oplawaai voor Vlaamse regering

08 NOVEMBER 2013 OM 03:00 UUR | Van onze redacteur Wim Winckelmans

Minister van Wonen Freya Van den Bossche (SP.A) stuurt het woonbeleid bij met een dubbele reprimande van het Grondwettelijk Hof.



Bouwpromotoren zijn volgens het Grondwettelijk Hof niet langer verplicht bij elke grote verkaveling sociale woningen op te nemen. Ba

De Vlaamse regering kreeg gisteren een flinke oplawaai van het Grondwettelijk Hof. Dat vernietigde twee onderdelen van het gerenommeerde grond- en

# (5) Binding targets and net gains, also at local level





Home Opportunity The Challenge Commitments

## The Challenge

### A global effort

The Bonn Challenge is a global effort to bring 150 million hectares of the world's deforested and degraded land into restoration by 2020, and 350 million hectares by 2030.

It was launched in 2011 by the Government of Germany and IUCN, and later endorsed and extended by the New York Declaration on Forests at the 2014 UN Climate Summit.

Underlying the Bonn Challenge is the forest landscape restoration (FLR) approach, which aims to restore ecological integrity at the same time as improving human well-being through multifunctional landscapes.

The restoration of 150 million hectares of degraded and deforested lands in biomes around the world – in line with the FLR approach – will create approximately USD 84 billion per year in net benefits that could bring direct additional income opportunities for rural communities. About 90 per cent of this value is potentially tradable, meaning that it encompasses market-related benefits. Achieving the 350 million hectare goal will generate about USD170 billion per year in net benefits from watershed protection, improved crop yields and forest products, and could sequester up to 1.7 gigatonnes of carbon dioxide equivalent annually.

The Bonn Challenge is not a new global commitment but rather a practical means of realizing many existing international commitments, including the CBD Aichi Target 15, the UNFCCC REDD+ goal, and the Rio+20 land degradation neutrality goal. It is an implementation vehicle for national priorities such as water and food security and rural development while contributing to the achievement of international climate change, biodiversity and land degradation commitments.

[The history of the Challenge](#)  
[The GPFLR](#)  
[Champions and initiatives](#)  
[Learning programs on restoration](#)

## bearded seals endangered status

A federal appeals court ruled that a certain population of bearded seals can be granted endangered species status even if it is not currently facing extinction.



Michael Cameron/NOAA Fisheries Service  
A tagged bearded seal rests at the ruling that said bearded seals do not



# [6] Broaden the perspective, also for common species and nature, if needed by court room action!

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## Nature Conservation as a Service of General Economic Interest

by Phedon Nicolaides, 26.01.2016

*Public funding of non-economic activities does not create State aid problems when any related economic activities are clearly separated. The 2012 SGEI package can apply retroactively.*

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### Introduction

Member States of the European Union are free to designate the services they consider to be in the general economic interest. However, the wide discretion they enjoy in this respect falls under the scrutiny of the Commission which checks for "manifest error". It is difficult to know when a Member State commits a manifest error in this context. This is because the concept of manifest error with respect to SGEI has not been defined in the case law. However, from cases where EU courts have agreed with the Commission's views, we can infer that Member States commit a manifest error when they do not justify why a service is in the general interest or when they do not ensure that such a service is provided to all the citizens who are supposed to need it.

Normally, an SGEI is a service which is needed in everyday life such as communications, energy, water distribution or postal delivery. Commission decision SA.27301 on subsidised acquisition of land in the Netherlands deals with an unusual case of SGEI.<sup>(1)</sup> The Netherlands considered that nature conservation was an SGEI. This is not only unusual with regard to the scope of the SGEI but also unusual with regard to the recipients of the SGEI. Normally an SGEI is delivered to citizens. Maintaining a natural landscape may be in the broad social interest but it can hardly be defined as a service which is "consumed" by citizens.



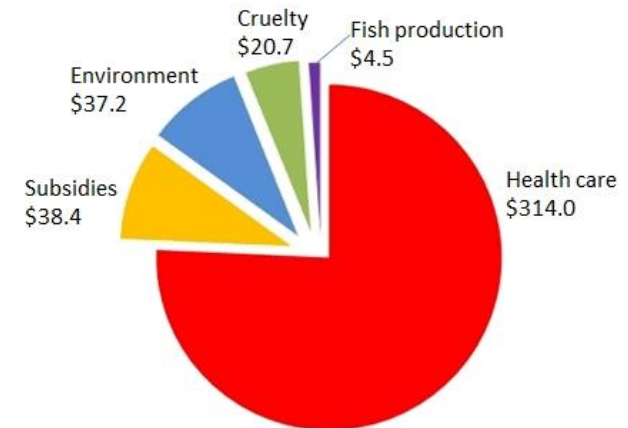
29 JUNI 2016

Recent verduidelijkt de EC in een communicatie een aantal van de sleutelbegrippen om tot een transparant staatssteunkader te komen. Voor Natuurpunt is dit een opsteker. De werking van Natuurpunt valt immers ruim onder de gestelde drempels. We zijn dan ook hoopvol dat hiermee ook voor het verleden duidelijk is gemaakt dat de steun aan Vlaamse natuurverenigingen de staatssteuntoets doorstaat. Voor de komende subsidiebesluiten bij het natuurdecreet betekent dit een nuttige kapstok om de vrijstelling te verzekeren.

Sinds 2008 wordt er in verschillende lidstaten bekeken in hoeverre Europese natuurverenigingen "ondernemingen" zijn die "economische activiteiten" verrichten en steun aan hen zodus als staatssteun moet worden behandeld. ([zie eerder bericht](#))

# (7) Polluter pays principle: redirect funding schemes

## Total Externalized Costs of U.S. Animal Food Production (in Billions)



Total: \$414.8 billion yearly



The Earth currently has about 19.6 billion chickens, 1.4 billion cattle, and 980 million pigs being raised as livestock. If you added them all up, they'd **weigh more** than humans and all other wild animals *combined*.

## Nederlands milieubeleid krijgt een onvoldoende van het Europees Hof

GROEN

Emiel Hakkenes – 2:00, 8 november 2018

### Assessing the impacts of livestock production on biodiversity in rangeland ecosystems

[Rob Alkemade](#),<sup>a,1</sup> [Robin S. Reid](#),<sup>b</sup> [Maurits van den Berg](#),<sup>a</sup> [Jan de Leeuw](#),<sup>c</sup> and [Michel Jeuken](#)<sup>a</sup>

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Over the last century, increased livestock production has been achieved mainly through a shift from pastoral systems with free-range feeding toward mixed and industrial systems, where a substantial part (>10%) of the feed comes from crops or crop by-products and so-called landless or industrial livestock production systems, where the bulk of the feed (>90%) is produced off farm. Consequences of these shifts are substantial increases in cropland area for feed production and a strong increase in animal population densities outside rangelands (14). Although this change may have released pressure on rangeland systems, it has not avoided expansion of domestic livestock grazing into natural rangelands. This outcome has been the case in most of Africa and in the Brazilian Cerrado and Amazon region, whereas at the same time grazed rangelands in the central south of Brazil were replaced by cropland, such as for soybean and sugarcane production (15, 16).



tegen te veel stikstof in de natuur, zegt het rekkend arrest. Gesterkt door die uitspraak

# [8] Create more space for eco-restoration by addressing livestock

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## **4) CONCLUSION**

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(e) Better integrating or mainstreaming biodiversity issues within and across all sectors of society, including into national planning and development processes and policy development, to better account for policy leakages and spill-over effects in decision-making and the unintended negative impacts of policy decisions;

HOME GEMIST NIEUWS RUBRIEKEN FOTO'S

## NIEUW DELTAPLAN VOOR BIODIVERSITEIT IN NEDERLAND

WOENSDAG 19 DECEMBER 2018



ROODBRUINE GROEFBIJ OP EEN PAARDENBLOEM - FOTOGRAAF LINDE SLIKBOER

Supermarkten geven producten van boeren die zich actief inspannen voor het verbeteren van de biodiversiteit een prominenter plek. Het aanbod van Nederlandse producten in de winkels moet fors omhoog. Daarnaast krijgen deze boeren vanaf 2021 van de Rabobank rentekorting op nieuwe en bestaande leningen.

Dat zijn enkele van de afspraken die negentien partijen hebben gemaakt in het Deltaplan Biodiversiteit, dat zij woensdag

hebben gepresenteerd. Aan het Deltaplan werken onder meer het Centraal Bureau Levensmiddelenhandel (CBL), boerenorganisatie LTO Nederland, Unilever, kennisinstituten en natuur- en milieu-organisaties mee. Het komende halfjaar hopen ze ministeries, provincies, gemeenten en waterschappen aan zich te binden.

### Voorbeeldfunctie

De partijen willen dat Nederland in 2030 een voorbeeld is van een dichtbevolkte delta met een rijke natuur, waarin het goed wonen en werken is. Daarvoor is herstel van de biodiversiteit nodig, want "veel van wat de supermarkten verkopen, begint als plantje in de grond. Of het nu groente, melk, een karbonaadje of brood is", aldus directeur Marc Jansen van het CBL. "Daarom moet het voor boeren aantrekkelijk zijn om op een natuurvriendelijke manier voedsel te produceren", zegt Kirsten Schuijt, directeur van het Wereld Natuur Fonds. Het WNF denkt samen met de Rabobank en LTO na over nieuwe verdienmodellen voor boeren.





# Thank you!