

Sustainable management of the North Sea: what measures can legally be taken by Belgium in favour of marine biological diversity?

F. MAES

Summary

In this contribution, the Belgian law on the protection of the marine environment will be explored in relation to biological diversity. Further attention will be paid to the political commitments in the 5th Ministerial North Sea Declaration (2002), especially related to the protection of species and habitats. The author concludes that, from a legal point of view, most new activities in the Belgian part of the sea can be regulated in a sustainable way on the basis of Belgian laws, but that these laws are not yet fully implemented. Especially on the protection of habitats and the reduction of fishery impacts, there is still a long way to go.

Keywords: sustainable management, species and habitats, marine biological diversity

Samenvatting

In deze bijdrage ligt de klemtoon op de Belgische wet ter bescherming van het mariene milieu en de biologische diversiteit. Bijzondere aandacht gaat verder uit naar een toekomstig Noordzeebeleid gesteund op de 5de Ministeriële Noordzeeverklaring (2002), meer bepaald met betrekking tot de bescherming van soorten en habitats. Vanuit juridisch standpunt kunnen we concluderen dat de meeste activiteiten, waaronder ook nieuwe activiteiten op zee, op een duurzame wijze kunnen worden gereguleerd op basis van Belgische wetgeving. Een optimale uitvoering van deze wetten moet echter nog worden doorgevoerd, vooral met betrekking tot de bescherming van habitats en het terugdringen van de effecten van de zeevisserij.

Trefwoorden: duurzaam beheer, soorten en habitats, mariene biodiversiteit

1. Sustainable management of the Belgian part of the North Sea: principles and legal efforts so far

In 1999, the Belgian Parliament approved two important maritime laws: the Law on the protection of the marine environment in the areas under Belgian jurisdiction (Law MMM) and the Law on the exclusive economic zone of Belgium in the North Sea (Law EEZ). These two laws can contribute to a great extent to a more sustainable management of the Belgian part of the North Sea and the conservation and improve-

ment of its biological diversity. The Law EEZ i.a. divides the Belgian part of the North Sea in a territorial sea, a contiguous zone, a continental shelf, an exclusive economic zone and a fishery zone (further referred to as maritime areas), in accordance with the Law of the Sea Convention (LSC) and in respect of the boundaries agreed with our neighbouring countries in bilateral agreements (see MAES *et al.*, 2000). Furthermore, the Law EEZ amends the fisheries laws and the Continental Shelf Law (1969).

The overall objective of the Law MMM is the preservation of the specific character, the biological diversity and integrity of the marine environment, through measures of protection and measures to restore damage and environmental disruption (Art. 3). This law is the first Belgian law introducing and defining the principle of sustainable management of the sea, the precautionary principle, the polluter-pays principle and the principle of restoration of damage or environmental disruption (MAES, 1999). Sustainable management of the maritime areas means that natural resources should be kept available in sufficient quantities for future generations, and effects of human activities therein may not exceed the capacity of the environment. Sustainable management has to be achieved by protecting ecosystems and ecological processes for the functioning of the marine environment, preserving biological diversity and stimulating nature conservation (Art. 4, §5). Users conducting an activity in the maritime areas have to take all necessary precautions to prevent damage and disruption of the marine environment (Art. 5). The latter is a clear *due care* obligation. The law also introduces strict liability in case of environmental damage (CARETTE, 1999).

The Law MMM is a framework law and quite some articles need further elaboration through implementing legislation. At least 14 Royal Decrees (RD) are necessary and 10 are optional to give full effect to the objectives of the law (MAES, 2002). Important RD further implementing this law, already agreed upon and published, are:

- a new procedure authorising dumping of dredged materials and inert materials in sea (12 March 2000);
- the installation of an advisory commission for the management of the exploration and exploitation of the conti-

mental shelf and the territorial sea (12 August 2000);

- the procedure for prior licensing and authorisation of certain activities at sea (20 December 2000);
- environmental impact assessment procedures for activities at sea subjected to prior licensing or authorisation (20 December 2000);
- the protection of species at sea (21 December 2001).

So far, there has been no decree establishing nature reserves to protect species and habitats at sea. Article 6 of the Law MMM empowers the King to take all measures necessary to implement international conventions and EC Directives mentioned in this article, such as the Habitat Directive.

2. Nature conservation in the 5th North Sea Declaration (2002)

At the 5th North Sea Conference in Bergen (Norway) in March 2002, the ministers of environment responsible for the protection of the North Sea agreed to take further action on the ecosystem approach by making use of Ecological Quality Objectives (EcoQOs)¹, the conservation, restoration and protection of species and habitats, the reduction of environmental impacts of activities at sea, the prevention of pollution from hazardous substances and the prevention of eutrophication. More than in previous North Sea Declarations (1984, 1987, 1990 & 1995), emphasis has been put on nature conservation and sustainable fisheries. The ministers agreed that “by 2010 relevant areas of the North Sea should be designated as marine protected areas belonging to a network of well-managed sites, safeguarding threatened and declining species, habitats and ecosystem functions, as well as areas which best represent the range of ecological and other relevant characters in the OSPAR² area”. The ministers of the EU Member States confirmed that they would fulfil their obligations under the Habitats and Birds Directives to protect species and nominate sites for the Natura 2000 network. They further recognised the potentially severe, irreversible and transboundary effects of releases of genetically modified marine organisms and the need to apply the precautionary principle. They agreed to take all possible actions to ensure that the culture of genetically modified marine organisms is confined to land-based facilities in order to prevent their release into the marine environment. The ministers agreed to take action to reduce the risks and minimise adverse effects on ecosystems, habitats or naturally occurring species arising from the introduction or the release of non-indigenous species.

1. An Ecological Quality Objective (EcoQO) is the desired level of an ecological quality. Such a level may be set in relation to a reference level. An Ecological Quality (EcoQ) is defined as: “an overall expression of the structure and functions of the marine ecosystem taking into account the biological community and natural physiographic, geographic and climatic factors as well as physical and chemical conditions including those resulting from human activities”.

2. OSPAR is the North-East Atlantic Ocean covered by the Convention for the Protection of the Marine Environment of this area: see <http://www.ospar.org>.

In order to reach sustainable fisheries, the ministers agreed to:

- reduce the capacity of the fishing fleet;
- introduce the precautionary principle for setting the total allowable catches (TACs);
- extend TACs to unregulated species;
- make recovery plans based on a multi-species approach;
- promote fishing activities with less impact;
- close areas to protect juveniles, either permanent or temporary;
- prevent highgrading;
- reduce unwanted bycatch;
- improve fishing gear to minimise incidental catches and to establish undisturbed areas of significant size.

3. Nature conservation in the Law MMM

Article 7 of the Law MMM allows the Minister of Environment to designate protected maritime areas, split into five categories ranging from marine reserves to bufferzones, and to take protective measures as required in Article 8 (a) of the Convention on Biological Diversity; Article 4 of the Birds Directive and Article 4 of the Habitats Directive.

Marine reserves are the most strictly protected areas and the law makes a differentiation between *specific marine reserves* and *integral marine reserves*. The former require an active and specific management, whereas the latter are to be left alone in their natural state. For each specific marine reserve, measures for management, conservation, restoration or nature development have to be taken, as well as measures for nature education. Furthermore, a management committee shall be installed to implement the management and conservation measures (Art. 9). In both integral and specific marine reserves all activities are forbidden, except the following: surveillance and control; monitoring and scientific research by, or with the permission of, the government; shipping, unless the area is accepted as an area to be avoided; professional fisheries, unless the Minister of Environment and the Minister of Agriculture decide otherwise; in the specific marine reserves, all the conservation and restoration measures taken on the basis of this law; military activities, although they have to be carried out with due care (Art. 8).

A third category of marine protected areas are *special protected areas* or *special areas of conservation*, which allow to establish the categories of protected areas included in the Birds Directive (Special Protection Areas) and the Habitats Directive (Special Areas of Conservation). According to the Habitats Directive these areas will be included in an international network of protected areas (Natura 2000 Network).

The last two categories of marine protected areas are *closed areas*, in which certain activities will be prohibited during part of or the whole year, and *buffer zones*. Buffer zones can provide additional protection to the other categories of protected areas, in which the measures are less strict than in the protected areas themselves. Closed areas can be used to limit certain activities during part of the year, for instance to protect the breeding seasons of birds.

So far, no measures have been taken to implement Article 7 of the Law MMM. Although the maritime area under Belgian jurisdiction is very small, some important sandbanks form a habitat for several bird and fish species. These marine habitats are of international importance since 1,900 ha have been designated as Ramsar site, and 17,000 ha, comprising the entire existing Ramsar 'Vlaamse Banken' site, have been proposed to the European Commission to be considered as a Special Conservation Area under the EC Habitats Directive. The sandbanks are not only important for the marine environment, but also for coastal habitats on the landside. Several of these habitats are now protected (such as dunes, beaches, mud flats). By protecting the marine habitats, an integrated range of coastal habitats can be maintained (CLIQUET & MAES, 1998; CLIQUET, 1999).

4. Species protection in the Law MMM

Articles 10 to 14 of the Law MMM deal with species protection in the maritime areas. The intentional introduction of genetically modified organisms, whether indigenous or not, is totally prohibited in the maritime areas (Art. 11, §4). The intentional introduction of non-indigenous species is prohibited, unless a permit is granted. The unintentional introduction of non-indigenous species through ballast water of ships can be forbidden by RD (Art. 11, §1). According to Article 12, the hunting of birds and mammals in the maritime areas is prohibited. The law further foresees the option to limit non-commercial fisheries. All Cetacea or Pinnipedia caught unintentionally and still alive and not wounded, for instance as bycatch, are to be released immediately. This catch has to be reported (Art. 13). Wounded or sick marine mammals, either stranded or as a result of bycatch, will be subject to a procedure of relief and measures of treatment (Art. 14).

The protection of species in the maritime areas includes the obligation to establish a list of protected species, for which there is a prohibition on:

- 1) capturing, killing and injuring;
- 2) intentionally disturbing;
- 3) damaging breeding or rest sites;
- 4) possessing, transporting and trading.

An exception to these prohibitions can be allowed for reasons of public health, scientific research, education, repopulation or reintroduction of these species (Art. 10). The obligation to take specific protection measures for certain vulnerable or threatened species is included in several international agreements (CLIQUET & MAES, 1998).

The Royal Decree of 21 December 2001 implements the protection of species at sea by i.a. promulgating a list of protected species. There are three lists, one with species fully protected by Article 10 of the Law MMM, but limited to Cetacea, Pinnipedia and *Lutra lutra*, and a second and third list with species (reptiles, fish and birds) protected by the Law MMM, taking into account protection measures defined in conventions and EC Directives. Annex 4 of the RD introduces detailed procedures for reporting undeliberate capture of living species and undeliberate capture of injured or dead

marine mammals and reptiles, the procedure in case of detecting dead animals and animals in distress and the procedure for the use of explosives and acoustic devices. Depending on what kind of explosives and acoustic devices, the RD foresees either a reporting procedure or a permit procedure (Art. 19). There is also a permit procedure in case of intentional introduction of non-indigenous species in the maritime areas. Article 21 makes it possible to appoint observers on board of Belgian fishing vessels in order to control bycatch of protected species. The same measure can be taken on board of foreign fishing vessels during fishing activities in the Belgian maritime area. Finally, to protect the marine biodiversity, it is prohibited to use explosives, poisonous or anaesthetic products, bottom fixed nets, drifting nets and electricity in recreational fisheries (Art. 18).

5. Conclusion

The Law MMM and Royal Decree of 21 December 2001 on the protection of species already implement the prevention of releases of genetically modified organisms in the marine environment and reduce the risks of the introduction of non-indigenous species by applying the precautionary principle, a permit and an environmental impact assessment, as required in the 5th North Sea Declaration. The establishment of sufficient nature reserves at sea has not been done yet, despite the first attempts in the late 1990s. Public controversy at the coast stopped this process in an early stage.

Further measures will be necessary to control fisheries, to make a Belgian North Sea action plan and to prepare for a spatial North Sea plan in cooperation with local authorities, the Flemish Region and other stakeholders involved in order to reach a more integrated coastal zone management (CLIQUET, 2001), to balance old activities at sea with new ones (e.g. offshore wind mill farms) and to conserve and improve biological diversity in the maritime areas.

With thanks for the support of the Federal Office for Scientific, Technical and Cultural Affairs (OSTC, now: Federal Science Policy Office) in the Programme 'Sustainable Management of the North Sea' (PODO I).

References

- CARETTE, A., 1999. De aansprakelijkheidsregeling uit de wet ter bescherming van het mariene milieu. *Tijdschrift voor Milieurecht*, 1999/5: 362-374.
- CLIQUET, A. & MAES, F., 1998. The New Belgian Law on the Protection of the Marine Environment. *Journal of International Wildlife Law & Policy*, 1998/3: 395-402.
- CLIQUET, A., 1999. Recente ontwikkelingen inzake natuurbehoudswetgeving in het mariene en kustzonemilieu. *Tijdschrift voor Milieurecht*, 1999/5: 346-361.
- CLIQUET, A., 2001. Coastal Zone Management in Belgium. *Revue juridique de l'environnement*, numéro spécial: Aménagement et gestion intégrée des zones côtières: 85-106.

MAES, F., 1999. De wet van 20 januari 1999 ter bescherming van het mariene milieu in de zeegebieden onder de rechtsbevoegdheid van België: op weg naar een duurzaam gebruik van de zee. *Tijdschrift voor Milieurecht*, 1999/4: 270-285.

MAES, F., CLIQUET, A., SEYS, J., MEIRE, P. & OFFRINGA, H., 2000. Limited Atlas of the Belgian Part of the North Sea. Federal Office for Scientific, Technical and Cultural Affairs, Brussels: 31 pp.

MAES, F., 2002. De Belgische wet ter bescherming van het mariene milieu (1999) en zeeverontreiniging. *In*: VAN HOOYDONCK, E. (ed.), *Zeeverontreiniging: preventie, bestrijding en aansprakelijkheid*. MAKLU, Antwerpen: in druk.

Frank MAES
Ghent University
Department of Public International Law
Universiteitstraat 6
9000 Ghent