

The EU Wild Birds and Habitats Directives and the Adaptation of Nature to Climate Change



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Situating the topic



- Mitigation
- Adaptation of human societies
- Adaptation of nature



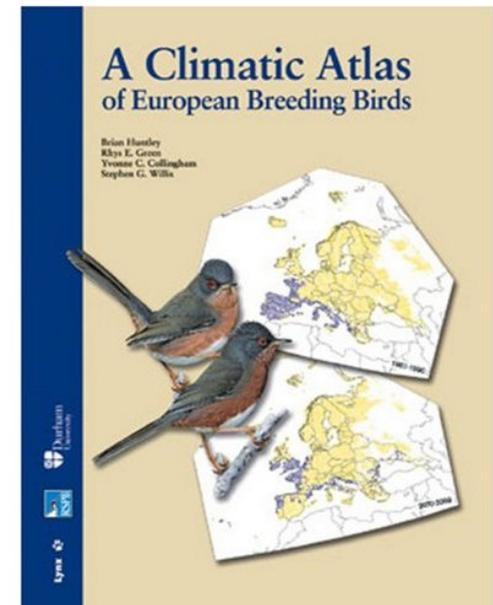
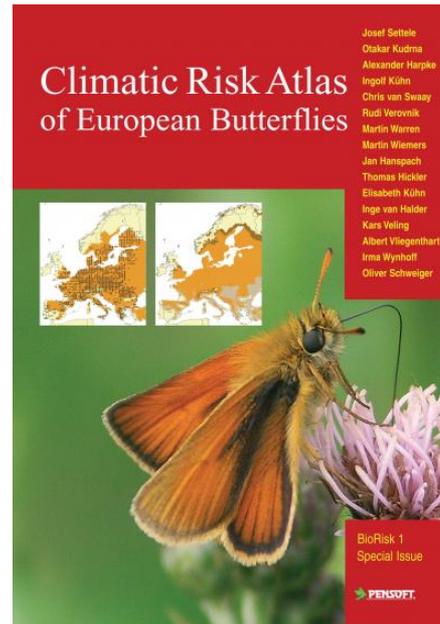
Climate change & nature



Changes in:

- Temperature
- Precipitation
- Extreme events
- ...

➤ Nature's response:
(attempted)
adaptation



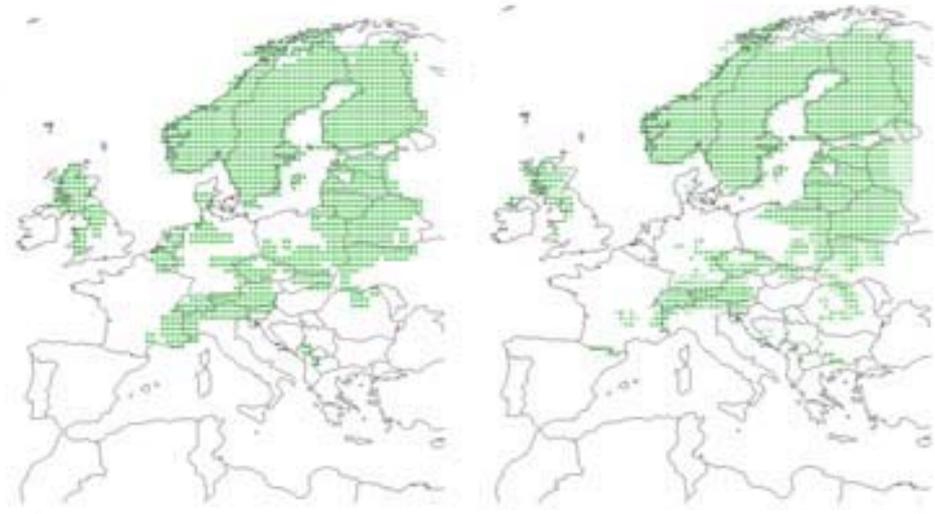
Climate change & nature (cont.)



Adaptation
problematic:

1. Rate of change
2. Existing pressures

➤ Adverse
impacts

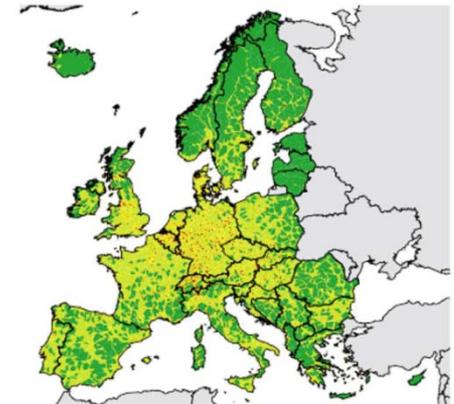


Map of Europe's fragmentation

Designated nature areas are under pressure from transport infrastructure in countries with a dense transport network. On average, about half of designated areas in Europe are affected by transport.

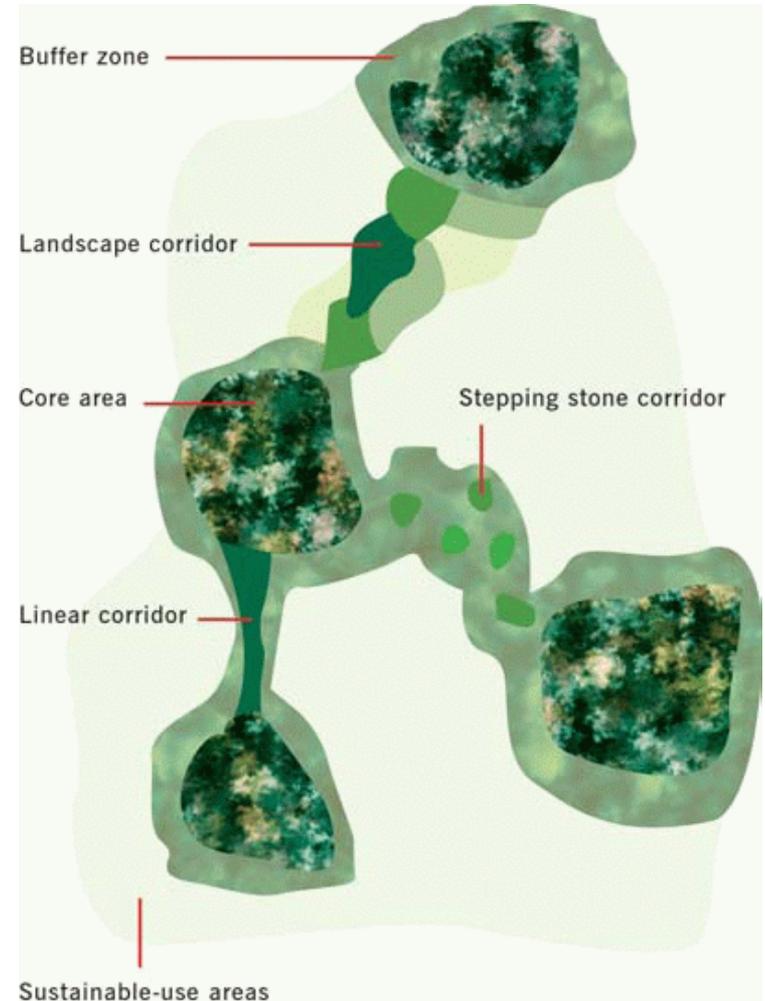
Germany is an example of a country with a highly developed transport infrastructure impacting upon almost every designated area. Finland, on the other hand, has about 90 % designated areas remote from any type of transport influence. The correlation with population density is clearly visible in the map.

Note: Infrastructure data from Estonia, Latvia and Lithuania are incomplete.



Adaptation measures

- Site management
- Enlarge habitats
- Connectivity
- Active translocation
- Reduce other stressors
- ...
- International cooperation



International policy: G8/G20



- ‘spontaneous adaptation is not expected to be sufficient to reduce the impacts on biodiversity at all levels, or on vulnerable ecosystems’
- ‘Proactively putting in place actions for climate change adaptation of natural and managed ecosystems’

Carta di Siracusa on Biodiversity, 24 April 2009

CBD COP 2004-08



- ‘integrate climate change adaptation measures in protected area planning, management strategies, and in the design of protected area systems’
- ‘take measures to manage ecosystems so as to maintain their resilience to extreme climate events and to help [..] adapt to climate change’

CBD COP (cont.)



‘cooperate regionally in activities aimed at enhancing habitat connectivity across ecological gradients, with the aim of enhancing ecosystem resilience and to facilitate the migration and dispersal of species with limited tolerance to altered climatic conditions’

International law



Big questions:

- To what extent is current international nature conservation law capable of facilitating adaptation of nature to climate change; and
- what would be necessary to make it fully capable?

International law (cont.)



- Global
 - Ramsar Wetlands Convention 1971
 - World Heritage Convention (WHC) 1972
 - Migratory Species Convention (CMS) 1979
 - Biodiversity Convention (CBD) 1992
- Regional
 - EU Birds and Habitats Directives 1979/1992
 - CMS daughter agreements 1990-2010
 - ...

Wild Birds Directive (1979)



- Goal: conservation of EU bird species
- Means:
 - Sufficient habitat for all species (Art. 3)
 - Special Protection Areas (SPAs) for Annex I species and migratory species (Art. 4)
 - Strict protection (prohibitions & derogations) for all species (Art. 5, 9)

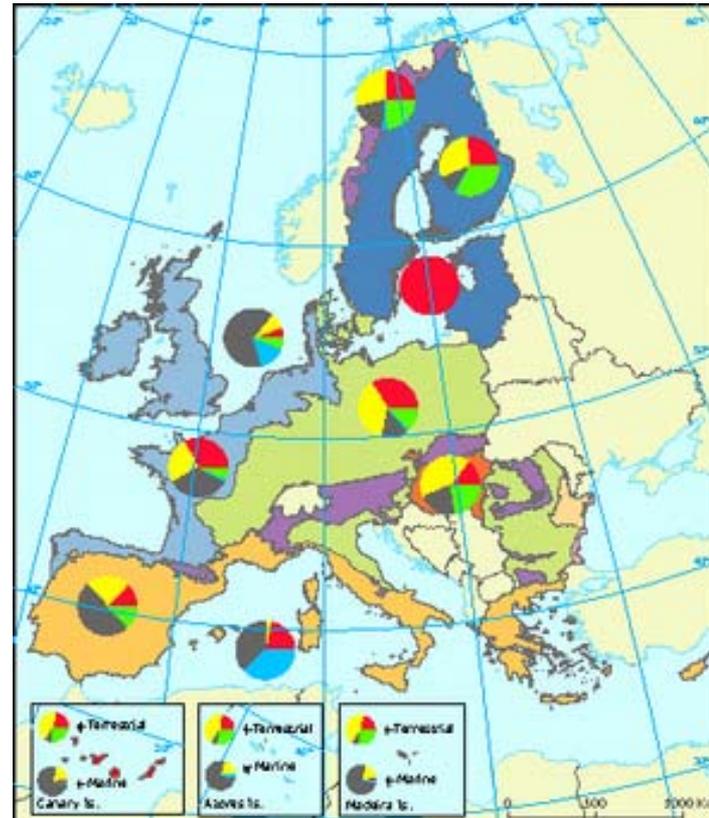
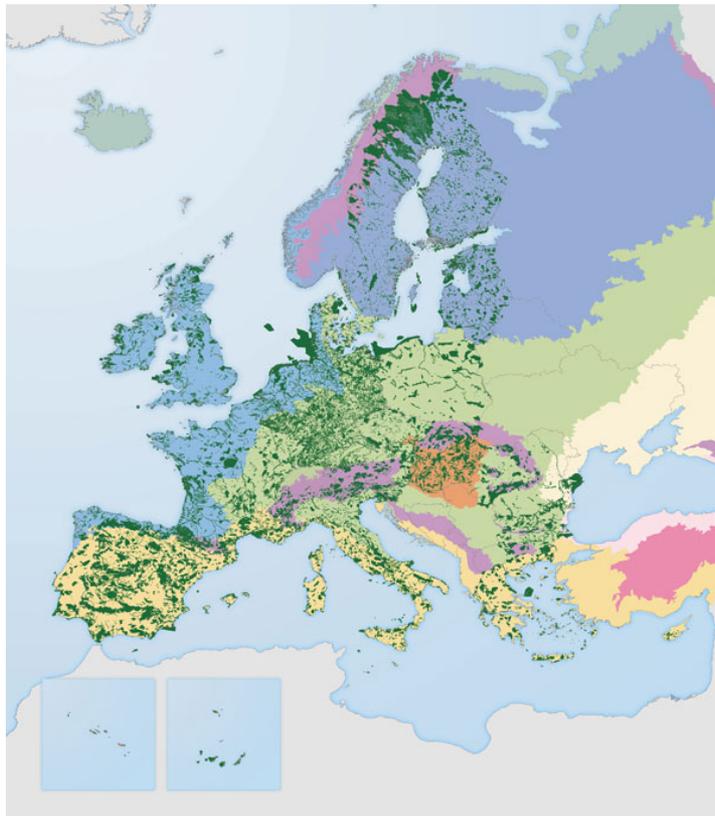
Habitats Directive (1992)



- Goal: conservation fauna, flora, habitats
- Means:
 - Special Areas of Conservation for Annex I habitats and Annex II species (Art. 3-11)
 - SACs + SPAs: ‘coherent European ecological network [...] Natura 2000’
 - ‘system of strict protection’ (prohibitions & derogations, active conservation measures) for Annex IV species (Art. 12-16)

Implementation

- Focus on Natura 2000
- Conservation status



Adaptation & BHD: mismatch?



- Climate adaptation not addressed
- Static approach to designation, objectives and management of sites
- No firm obligations connectivity
- No firm obligations transboundary coordination (designation and management sites, generic species conservation)
- ...

Adaptation: EU policy



- 2006 EU Biodiversity Action Plan
- 2007 Guidance on connectivity (Art. 3 BD and Art. 10 HD)
- 2009 White Paper on climate change adaptation
- EU Strategy for a Green Infrastructure & guidance on climate adaptation and Natura 2000 (under development)

Towards climate proof BHD



Options:

- Make most of existing law (interpretation)
- Amend instruments
- New instruments

Interpretation:

- European Commission
- EU Court of Justice

Interpreting BHD in light of CC: connectivity as example



ON THE ONE HAND:

Discretion in Art. 3 & 10 HD on connectivity:

‘Where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora’

‘Such features are those which, by virtue of their linear and continuous structure [...] or their function as stepping stones [...] are essential for the migration, dispersal [...] of wild species.’

Interpreting BHD... (cont.)



ON THE OTHER HAND:

Goal: favourable conservation status (FSC)

Art. 2 HD: ‘Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.’

Interpreting BHD... (cont.)



Status habitat 'favourable' when, *inter alia*:

- Range 'stable or increasing'; and
- 'structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future'.

Interpreting BHD... (cont.)



Status species 'favourable' when, *inter alia*:

- Species 'is maintaining itself on a long-term basis as a viable component of its natural habitats'; and
- 'there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis'.

Interpreting BHD... (cont.)



For SACs:

‘Member States shall establish the necessary conservation measures [..] which correspond to the ecological requirements of the’ habitats and species (Art. 6(1) HD)

Interpreting BHD (..)



Strict protection Annex IV species HD

- ‘coherent and coordinated measures of a preventive nature’ (Case C-183/05, 2007)
- Comprehensive and focused set of measures for each species, preferably species protection plan (Id.)

Interpreting BHD... (cont.)



Art. 3 BD:

- ‘take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats’ for all bird species (including outside SPAs)
- Obligation of result & proactive (e.g. Case C-117/00, 2002)

Interpreting BHD... (cont.)



- Similar exercises can be performed for other adaptation measures besides connectivity

Conclusions



- Despite *prima facie* mismatch, BHD can already be interpreted to require adaptation measures by member states
- Role European Commission
- Role EU Court of Justice

Thank you!



This research is financed by the Netherlands Organization for Scientific Research (NWO).

See also:

A. Trouwborst, 'International Nature Conservation Law and the Adaptation of Biodiversity to Climate Change: a Mismatch?' 21 *Journal of Environmental Law* (2009) 419