

The conservation of Belgian marine Natura 2000 sites

An Cliquet & Hendrik Schoukens



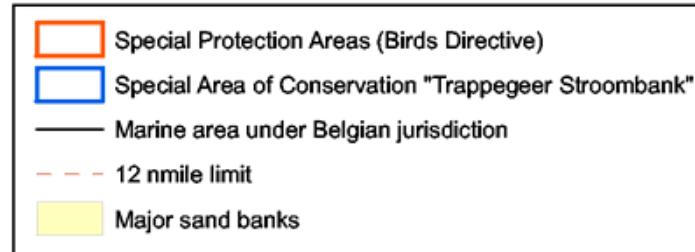
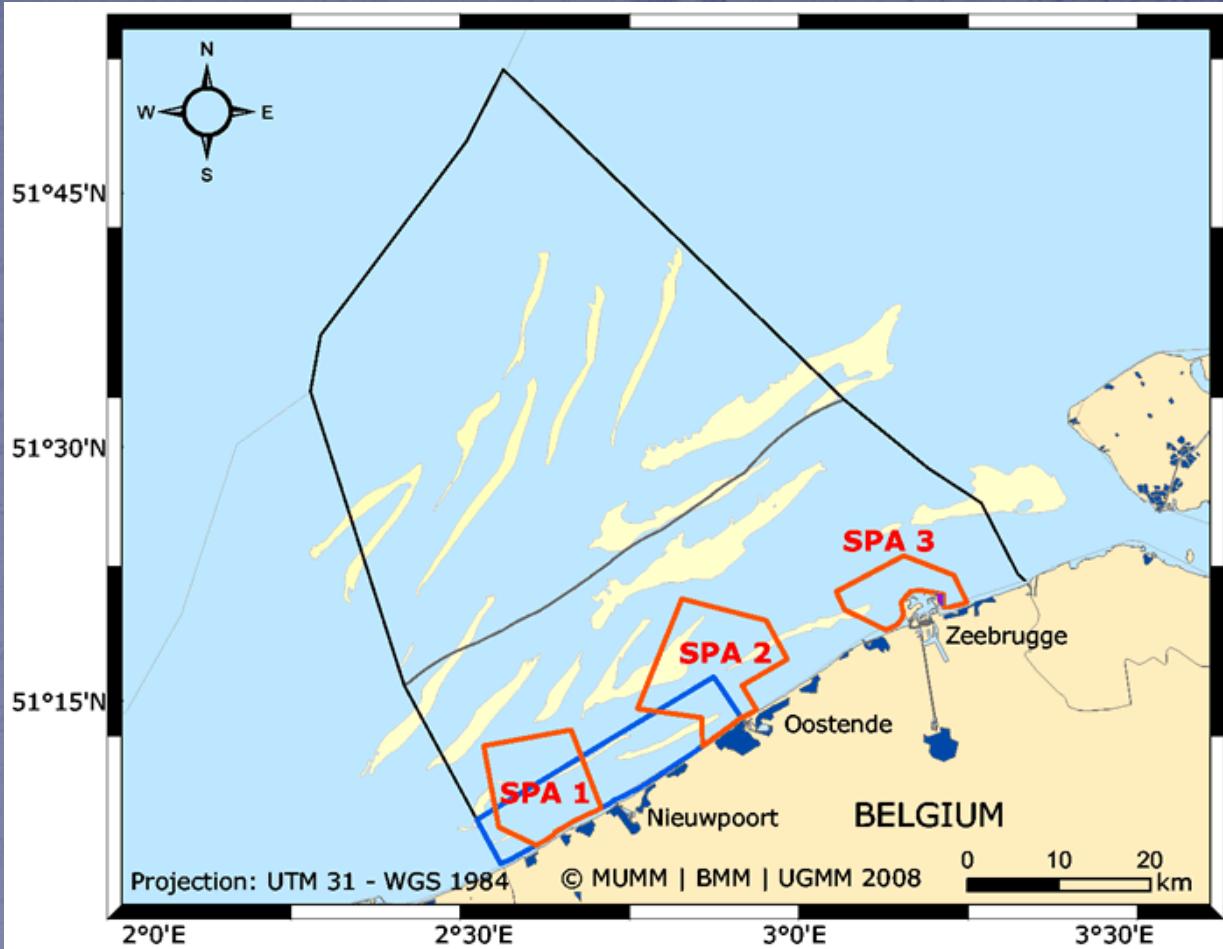


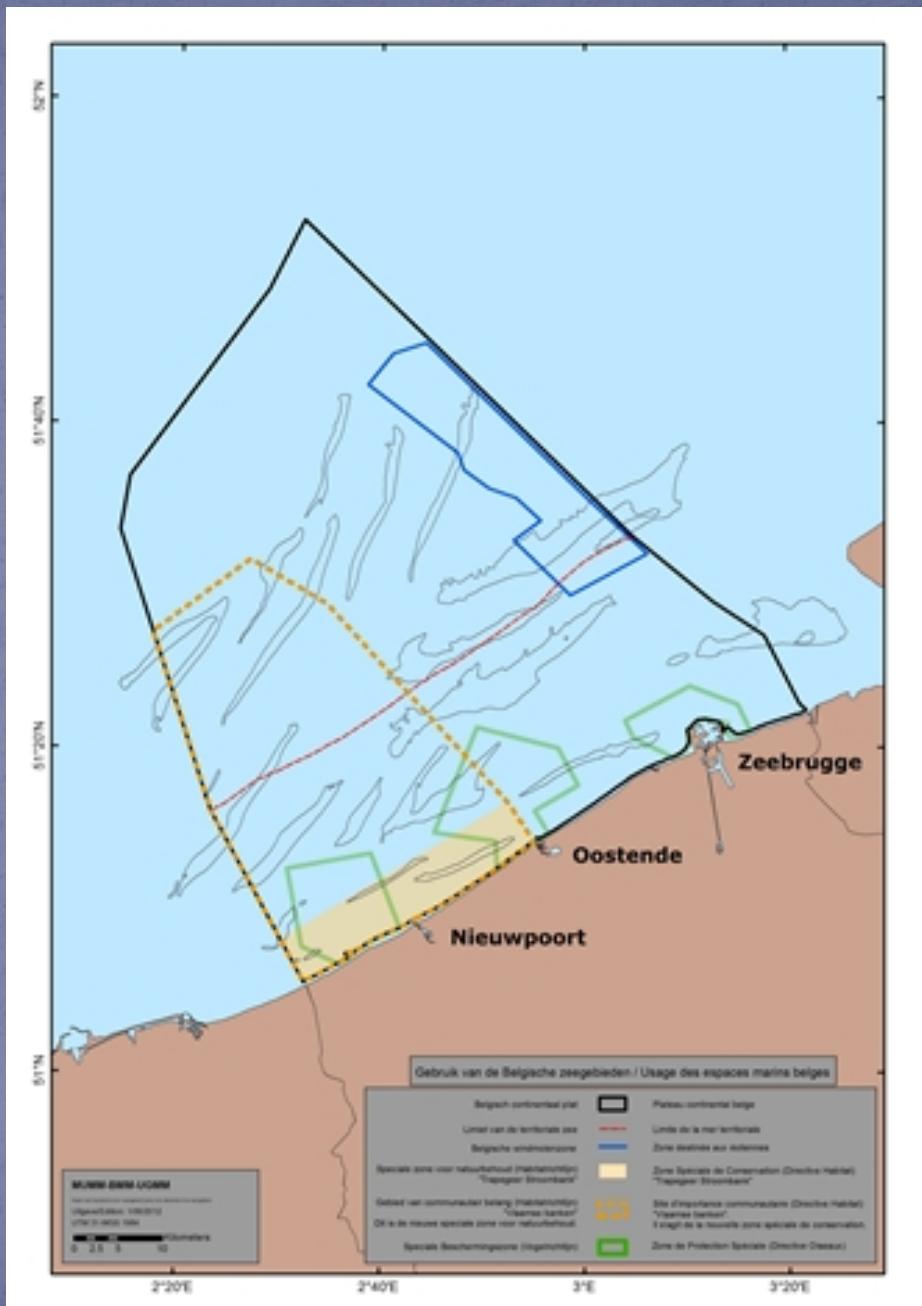
Natura 2000 in Belgian marine waters

- Legal basis for conservation and management of marine Natura 2000 sites: federal Law of 1999 on the protection of the marine environment
- Implementation of the law:
 - 2005: designation of 3 SPAs & 2 SACs (Trapegeer-Stroombank & Vlakte van de Raan) by Royal Decree
 - 2008: annulment by Court of State of Vlakte van de Raan
 - 2010: proposal to EU of extended Trapegeer-Stroombank site
 - 2011: inclusion of extended Trapegeer-Stroombank site in Community list
 - 2012: designation of extended Trapegeer-Stroombank site by Royal Decree

Natura 2000 in Belgian marine waters

- Marine Natura 2000 sites:
 - 3 SPAs: V1 Nieuwpoort, V2 Oostende, V3 Zeebrugge
 - 1 SAC: extended Trapegeer-Stroombank
- With the extension of the Trapegeer-Stroombank site 36% of Belgian marine waters are protected as Natura 2000





Natura 2000 in Belgian marine waters

- But: some legal problems remain...
- Study on legal problems, commissioned by federal government (administration for marine environment)
- Report (Schoukens et al., 2012) (in Dutch)
- Journal article Schoukens & Cliquet, Tijdschrift voor Milieurecht, 2012 (in Dutch)

Hercules@sea: 10 works for a better legal protection of Belgian marine Natura 2000 sites



10 works

- Work 1: evaluate different types of MPAs
- Work 2: create a better legal procedural framework for the designation of MPAs
- Work 3: re-designate the Vlakte van de Raan als SAC
- Work 4: create operational conservation objectives
- Work 5: limit the activities that are excluded from the protection regime
- Work 6: establish a management plan for each site
- Work 7: define the scope of the appropriate assessment and create a Natura 2000 permit
- Work 8: create a better procedural framework for the appropriate assessment
- Work 9: do not exclude the limitation of fisheries
- Work 10: include MPAs within marine spatial planning

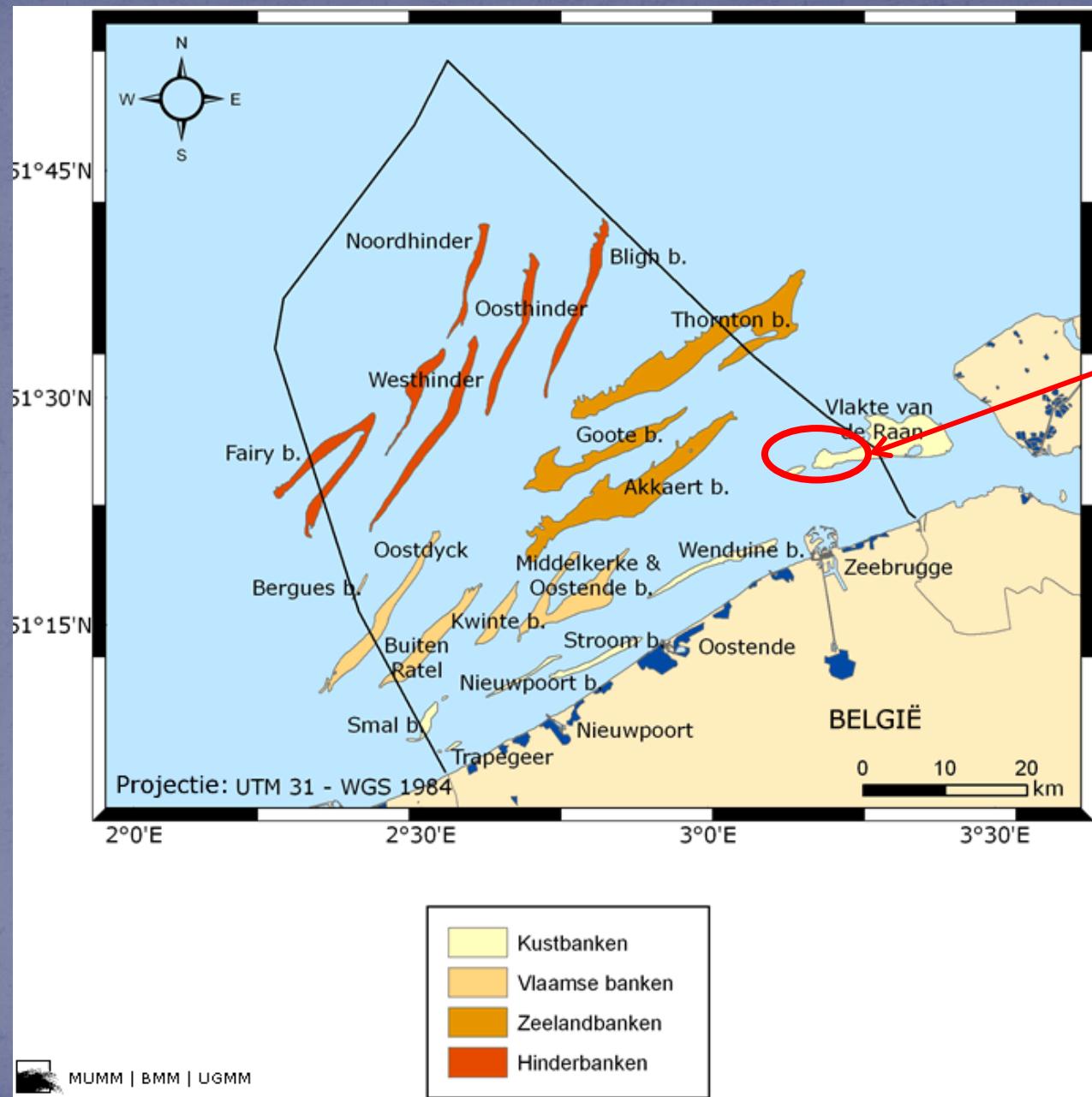
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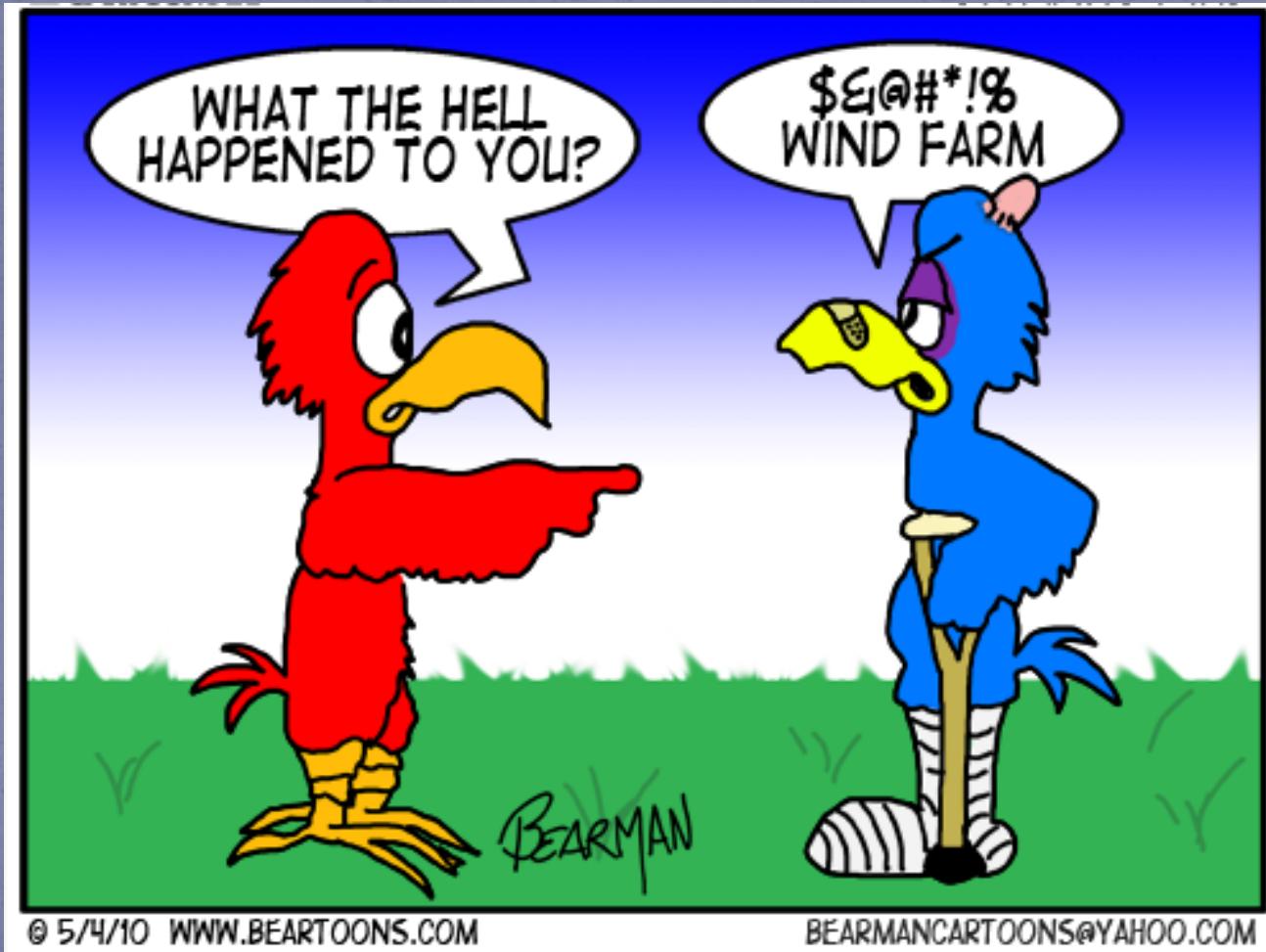
Re-designate Vlakte van de Raan



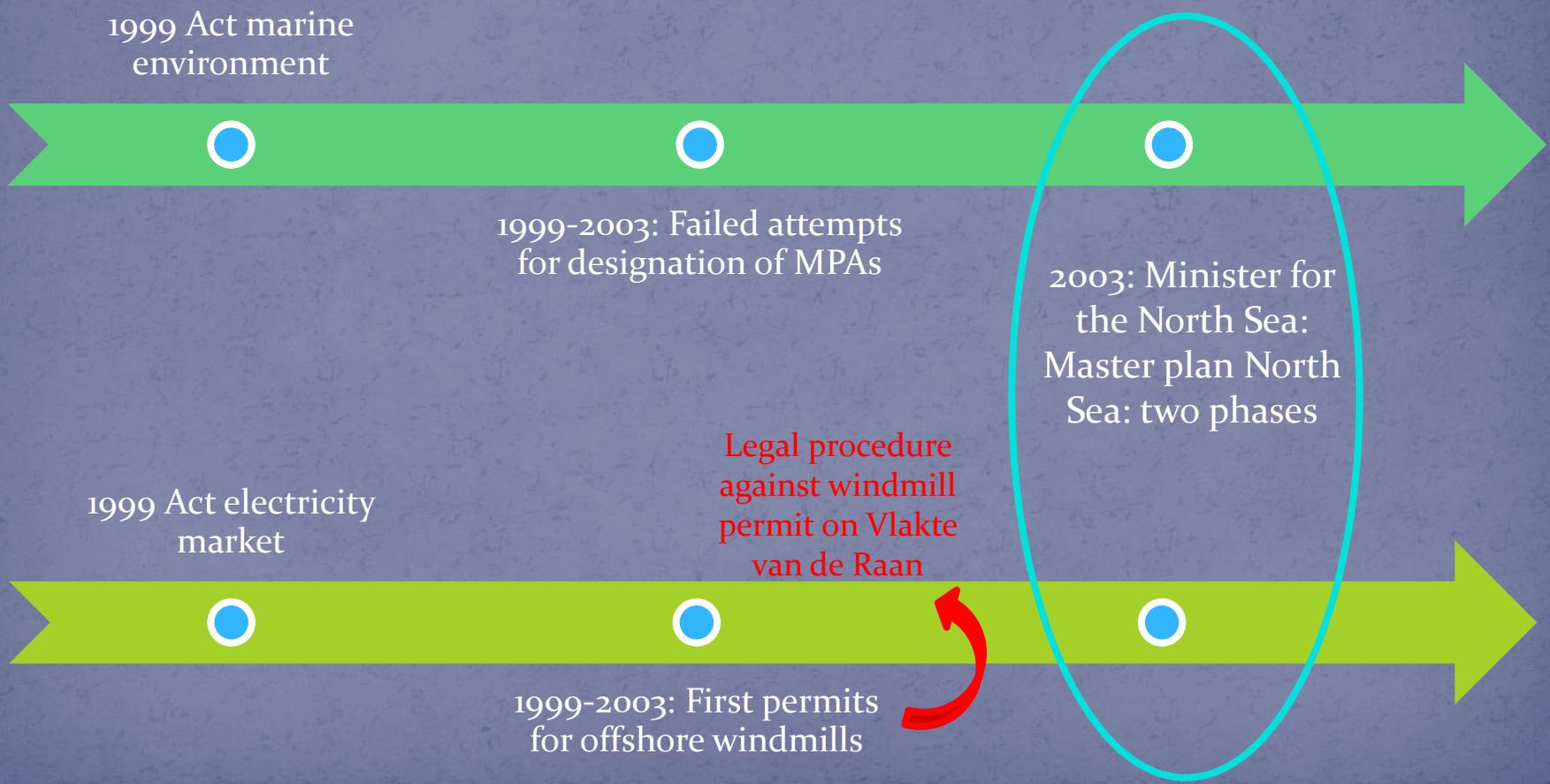


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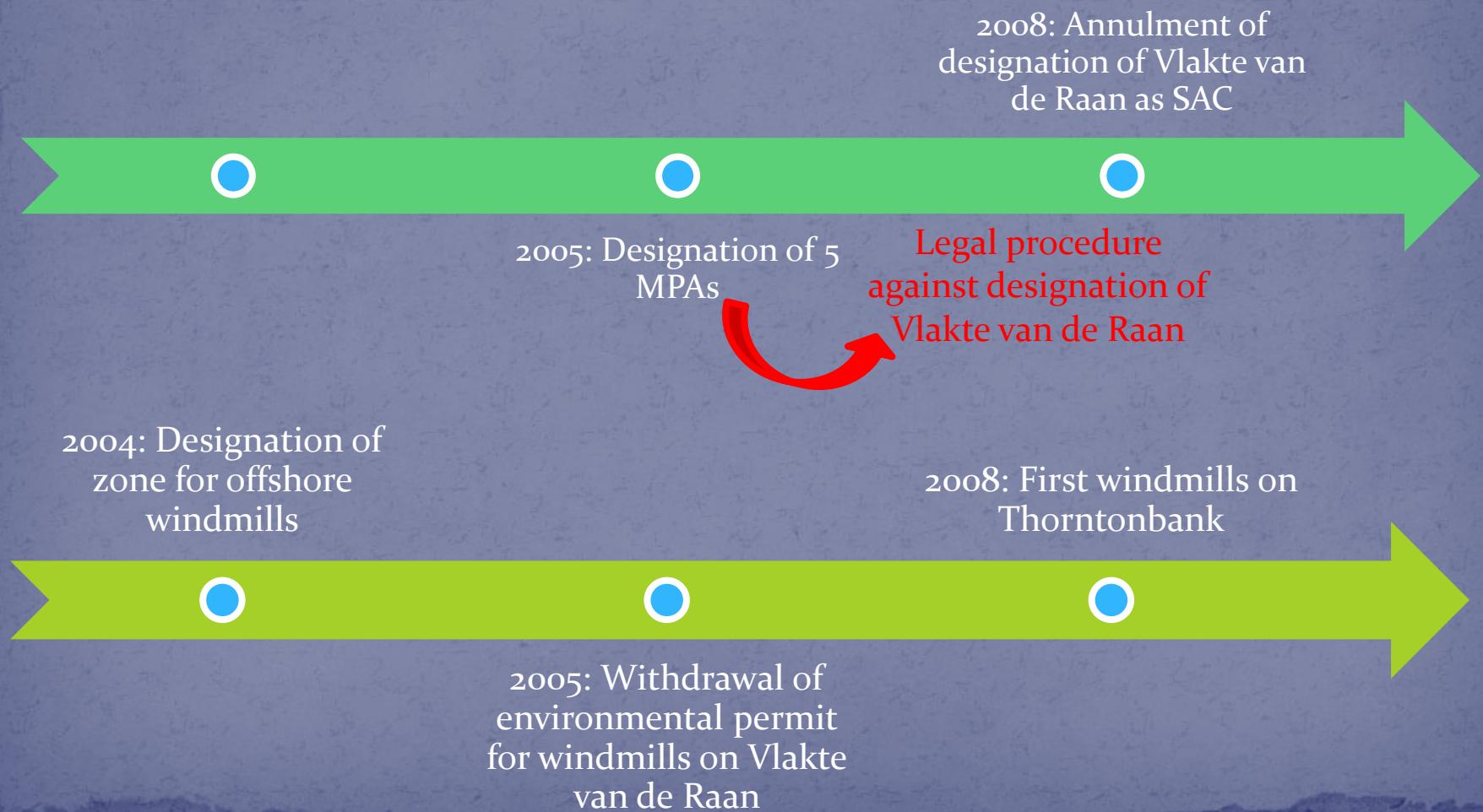
Two parallel processes



Two parallel processes

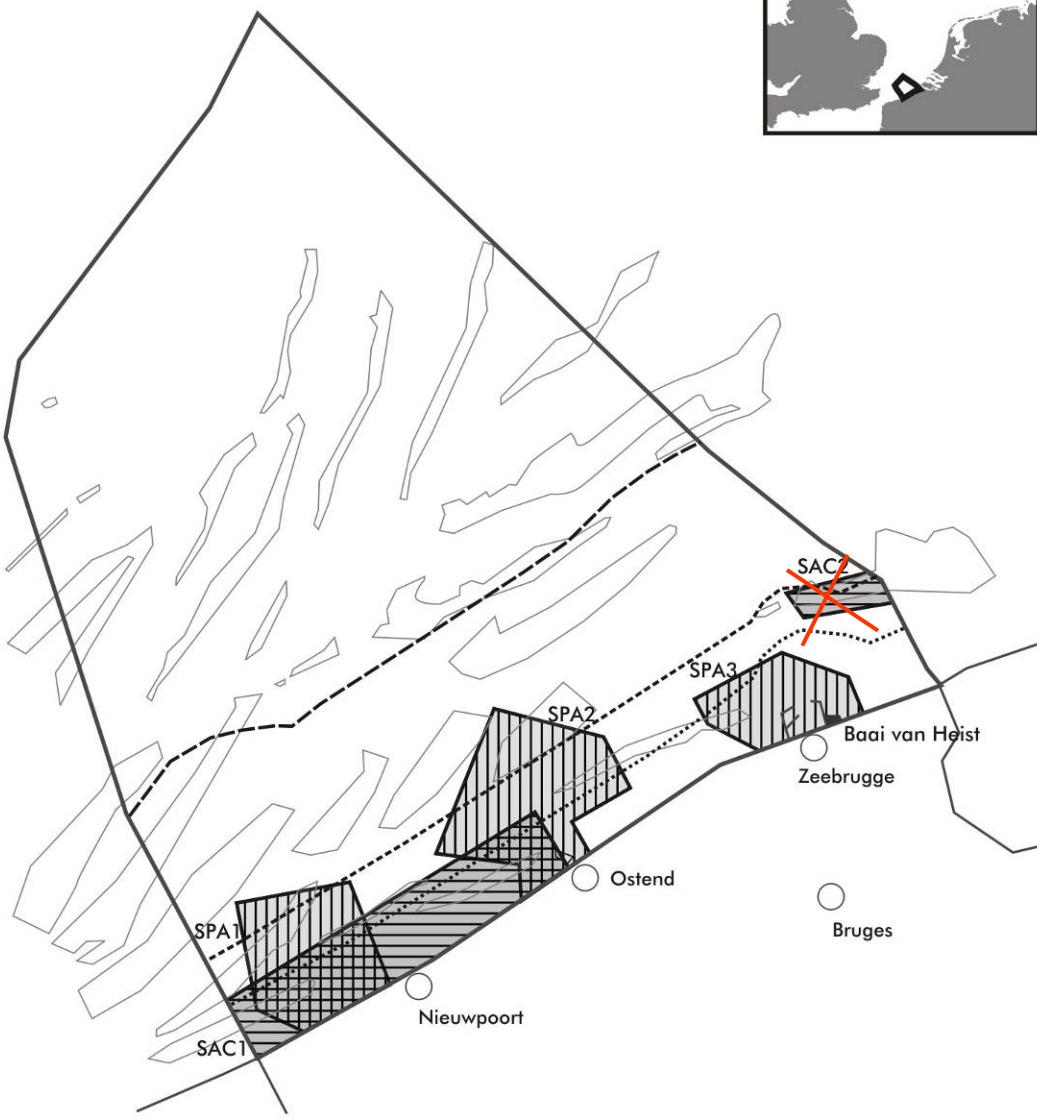


Two parallel processes (cont.)



Annulment of designation

- Procedure against designation of Vlakte van de Raan as SAC by electricity company:
 - Council of State: insufficient scientific motivation (in contrast to 4 other sites)
 - Council of State annulled designation of Vlakte van de Raan as SAC



- 3 nautical mile
- 6 nautical mile
- 12 nautical mile
- Sandbanks
- Cities
- Groynes of the port of Zeebrugge

MARINE PROTECTED AREAS:

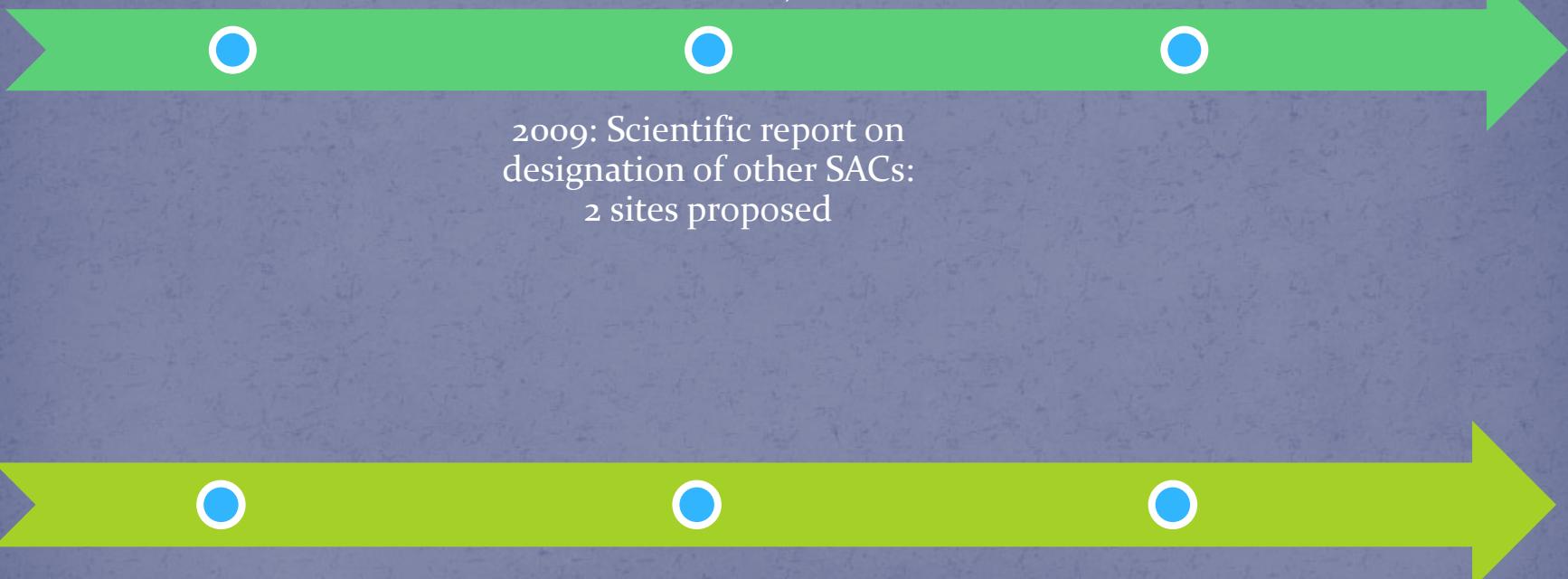
- Special Protection Areas (SPAs): SPA1, SPA2, SPA3
- Special Areas of Conservation (SACs): SAC1, SAC2
- Marine reserve 'Baai van Heist'

Two parallel processes (cont.)

2008: Vlakte van de Raan included in Community list

2009: Policy plan MPAs (no mentioning of Vlakte van de Raan)

2010-2012: Designation of new SAC (extension Trapegeer-Stroombank)



Conflict between European obligations and Belgian case law

- Conflict: Vlakte van de Raan is included in list of Sites of Community Importance, but is annulled at national level
- 3 options for Belgian government:
 - No designation at national level
 - Withdrawal of site from Community list
 - **Restart designation process**



Limit activities excluded from
protection regime/Do not
exclude limitation of fisheries



Competence issues with regards to fisheries and Natura 2000

- At the EU level:
 - Limitation of fisheries in Natura 2000 sites: an exclusive EU competence?
 - Yes according to Commission
 - No according to several authors
 - No ruling by Court of Justice
 - Limited competences by states (within 12 miles)
 - See for example: VIBEG agreement, The Netherlands

Competence issues with regards to fisheries and Natura 2000

- At the Belgian level:
 - Federal government: competence for marine Natura 2000
 - Flemish government: competence for sea fisheries

Competence issues with regards to fisheries and Natura 2000

- Law marine environment: conservation of SPAs and SACs (art. 8, § 3): activities can be prohibited, except for:
 - Control
 - Monitoring and scientific research
 - Military activities
 - Commercial fisheries
 - All other activities belonging to competence of Flemish Region (dredging,..)
 - Shipping, unless it is limited in implementation decree

Natura 2000 and fisheries

- At federal level: no specific restrictions on fisheries in Natura 2000 sites
- No legal possibility for federal government to take limitations on commercial fisheries in Natura 2000 sites:
 - Is excluded in law, based on division on competences
 - But: nature conservation is a federal competence!
- Federal government is competent to regulate sport fisheries (limitations in Royal Decree of 2001)

Natura 2000 and fisheries

- Possibilities for Flemish government to restrict fisheries in Natura 2000 sites?
 - Flemish fisheries laws: fishing permit: do not contain ground for limiting fishing activities for nature conservation reasons
 - Flemish nature conservation legislation: cannot limit fisheries as it only applies on land

Natura 2000 and fisheries

- Proposed solution:
 - Delete exceptions on fisheries in art. 8, § 1 & § 3 of law on marine environment
 - Include a “Natura 2000 permit” in law on marine environment, which can also apply to (certain) fisheries
 - Include an appropriate assessment for projects which require a Natura 2000 permit



Create a Natura 2000 permit

Natura 2000 permit

- Art. 6, § 3 Habitats Directive: obligation for an appropriate assessment of plans & projects
- Often, countries limit an appropriate assessment to projects that require a permit
- However: this is contrary to view of Court of Justice
- Law marine environment: includes the obligation for an environmental permit (art.25), but excludes several activities
- Proposal: create a Natura 2000 permit

Conclusion

- If the federal government succeeds in performing the 10 works, they will acquire an immortal hero status!

