

Temporary Nature Policy. Ofwel de Engelstalige vertaling van de beleidslijn tijdelijke natuur, zoals die geplaatst is in de staatscourant No. 29016, op 10 september 2015

Temporary Nature Policy

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1. Introduction

Removing nature can allow nature to develop. That's the apparent paradox of the Temporary Nature concept. This new way of looking at nature and conservation provides opportunities for nature and business alike.

Opportunities

The problem is clear: many landowners with development plans try to prevent protected plant and animal species from becoming established on their future construction sites to avoid conflicts with nature legislation. The innovative solution is also simple: if landowners can be given certainty that they will be able to remove newly-established protected species without any issues when construction work begins, they can stop their 'anti-nature' maintenance, and both nature and the landowners themselves will benefit.

Through Temporary Nature, more than 40,000 hectares of empty land could be given over to nature. And although each Temporary Nature Area will obviously be temporary, the gain for nature in general will be permanent. Seeds and young animals will spread out from Temporary Nature Areas into the surrounding environment, helping to preserve populations.

The approach will also benefit landowners, who will no longer have to carry out 'anti-nature' maintenance. Nor will they run the risk of being confronted with additional investigations and compensation requirements just as their construction work begins.

Areas suitable for temporary nature

Temporary Nature can be given an opportunity in areas which are not currently being used for their intended purpose. These areas include:

- areas for which a different use is specified in the zoning plan, where that use has not yet been implemented; and
- areas for which it is now known that the use will have to be changed (and where a change of use process is imminent).

The owner must be willing to let the land remain unused, pending implementation of the new use, to allow spontaneous natural development to occur. The land must also be available for temporary nature for a minimum of one breeding season (March to September).

The land may include areas of dredged sand close to ports, future industrial areas and housing development sites. Occasionally, it may also include derelict industrial sites or other land that will not be used for its intended use for a long time.

The importance of temporary nature

The Dutch government has a responsibility to maintain a 'favourable conservation status' for the flora and fauna in its territory. Temporary nature areas can contribute to this by providing plants and animals, including rare and protected species, with a temporary habitat and breeding ground. The impermanence of the sites could be a concern, but for many species, including terns, natterjack toads and various orchids, it isn't a problem. On the contrary, these species thrive in areas where the conditions experience significant variation. For these 'dynamic environment specialists' in particular, temporary nature areas are a welcome addition to permanent natural areas, where maintenance usually focuses on stability and preventing sudden changes. Temporary nature offers a place to settle, breed, forage, spend the night or pass the winter for pioneer species, species from early and later succession stages, migratory birds and winter visitors. The area can also function as a stepping stone or ecological connection, making it easier to reach other temporary and permanent nature areas.

In principle, temporary nature areas are open to people, but access to the land may require permission from the owner. In some cases, such as around hazardous installations or where quicksand may be present, it might be necessary to restrict access to the area.

The effect of temporary nature

The effect of temporary nature depends on how you look at it. On the site itself, plants and animals become established and their numbers increase, but then they disappear again when the planned project starts on that site. So in that place, the effect is temporary. But in the wider scheme of things the effect is permanent, because young animals and plant seeds spread out from the temporary habitat into the surrounding environment. This doesn't occur only when the project site is cleared; the process begins much earlier. Functioning as a colonisation centre means that temporary nature areas have a permanent effect on the populations of plants and animals in the wider environment.

The risk that some species may ultimately decline due to the development of temporary nature areas is negligible. That could only happen very locally and on an extremely limited scale, if the habitat occupied by that species outside the site is no longer suitable for the species. In such a situation, the cause of the decline would not be the development of a temporary nature area, but poor conservation status and/or negative developments in the 'permanent' habitat.

2. Statutory basis

An important feature of temporary nature is that the flora and fauna that develops over a certain period is actively removed when that period ends, when the landowner/initiator begins implementing the intended use. When construction work begins, the initiator may encounter issues with nature legislation if protected species are found to be living on the land. To be able to remove protected species, permission is required from the authorities with jurisdiction over statutory species protection.

Nature legislation interfaces:

The following protection regimes are relevant to Temporary Nature: species protection in all cases, and potentially also habitat protection.

Species protection:

The species protection component is always relevant, because the basic principle of Temporary Nature is that plant and animal species can establish themselves on a site, and protected species may be among them. Once protected species are removed or negatively impacted, the prohibitions in the nature legislation become relevant. In addition, the general duty of care applies to temporary nature. This duty of care requires all people to take 'sufficient care' for all wild animals and plants, including non-protected species, and their habitats. This is a general responsibility that applies to everyone. For example, for temporary nature areas this means that plants and animals should not be needlessly killed if there is a reasonable alternative solution, such as relocating them to another area.

Species protection assessments and temporary nature:

The law is designed to protect vulnerable species, so that the survival of these species in the Netherlands is not placed at risk. Statutory species protection was designed around a number of prohibitions, such as the prohibition on deliberately killing or intentionally disturbing protected animals, or the prohibition on deliberately gathering fruit or seeds from protected plants.

There are a number of possible exceptions to these prohibitions. For instance, exemptions may be granted if the following three criteria are met:

– There is no other satisfactory solution

On land where space is set aside for temporary nature, highly-dynamic biotopes can develop, from which a wide range of flora and fauna can benefit. This particularly applies to pioneer species, because areas where the dynamic places described above can be found are rare in the Netherlands. Setting up permanent nature areas would not provide a good solution to this problem either, since succession would occur in those places too. It can therefore be concluded that in cases where temporary nature is proposed, no other satisfactory solution is available.

– Significance of the operation

Temporary Nature contributes to sustainable conservation of native flora and fauna; it provides opportunities to promote the spread of species. Pioneer species and early species that require dynamic landscapes will benefit the most. At a later stage of natural succession, these species will disappear by themselves, creating space for other protected species. Temporary nature areas can thus create a permanent benefit. Species can grow stronger in the temporary areas, then spread out to occupy new habitats. It can therefore be concluded that Temporary Nature works to protect flora and fauna, and the statutory interest in this activity can be used as grounds for granting an exemption. Moreover, this interest also arises from the Birds and Habitat Directives.

– Favourable conservation status

As explained in the previous section, temporary nature has a positive effect on Dutch flora and fauna. Temporary nature also has no negative impact on the favourable conservation status of protected species occurring in the Netherlands.

Provided the other criteria for temporary nature are met (see the next section), this too can be grounds for the granting of an exemption. The approved temporary nature code of conduct can also be used, once it has been approved by the State Secretary for Economic Affairs.

Habitat protection:

The development of temporary nature on a site in or near a protected nature reserve (Natura2000) can have an impact on the natural assets in that protected reserve (external effect). If this impact is negative, a permit issued under the habitat protection regime is required. However, temporary nature almost always has a positive impact on ecological development; if it does not, then the impact is at least neutral (see previous section). Accordingly, there will be no significant negative impact in practice, which means that no permit will be necessary for temporary nature areas in the vicinity of protected nature reserves.

3. Procedure

Definition of temporary nature

Temporary Nature means that:

- the intended use of the land has been established,¹ or the use is clear, i.e. it must be convincingly demonstrated that the use will change and is no longer under discussion;
- the intended use has not yet been implemented;²
- the intended use does not relate to nature, as a general rule;³
- spontaneous natural development (or development with limited guidance)⁴ occurs between the time when an advance exemption is granted for the clearing of the protected species that may have established themselves in the area, and the time of actual implementation of the intended use;
- nature is given a minimum period of one year⁵ in which to develop; and
- the terms of any required compensation are met or adequate legal evidence is provided of how that will be done.

Conditions for a temporary nature exemption

The essential point of Temporary Nature is that an exemption is granted in advance, before the Temporary Nature develops, allowing the Temporary Nature Area to be cleared. Natural assets already present on the land in question are not covered by the exemption. After all, those are existing natural assets. For this reason, a proper inventory of the existing protected species in the area must be carried out, the results must be recorded, and the applicant for the Temporary Nature exemption must guarantee that all statutory requirements concerning the protected species that are already present will be met, before an exemption in the context of the Temporary Nature concept can be granted.

Applicants

Both individual landowners and groups of landowners can apply for exemptions.

This prevents redundant bureaucracy with extra work for applicants and RVO.nl alike. An application for one area may be submitted by one of the owners, and the exemption obtained delegated to the other owners via a private agreement.

Species included in the exemption

When assessing applications, a distinction will be made between the different biogeographical regions of the Netherlands. A species list is connected with each biogeographical region, indicating all of the species that may be found in that region. In terms of the species to which the exemption applies, the granted exemption can simply include a reference to the biogeographical map and the associated species list. Applicants for exemptions no longer have to carry out an assessment themselves of which legally-protected species may have established themselves in the Temporary Nature Area. The map and associated lists (and any future amendments to them) will be published in the Government Gazette.

¹ It is not necessary for the intended use to be established in an approved zoning plan. In certain cases, the intended use of a site can be established in another document such as a regional plan.

² Natural assets that develop in an existing residential or agricultural area, whether as a consequence of agricultural nature conservation or not, are not classified as Temporary Nature for the purposes of the Green Deal. Agricultural nature conservation requires a separate approach. Due to the uncertainty of the factors and parties involved, land of which the future use is still under discussion is not considered to fall within the concept of Temporary Nature.

³ An exception is made for land of which the intended use does relate to nature, but for whatever reason has not yet been able to be set up for that purpose.

⁴ The creation of temporary parks, playgrounds with green areas, public gardens and other green spaces does not fall within the definition.

⁵ The period may be longer, since temporary nature areas cannot be cleared at certain times of the year.

The biogeographical map and associated species lists also provide important opportunities for reducing the bureaucracy involved with applications and the granting of exemptions outside of the Temporary Nature concept. Applicants for ordinary exemptions can use the map and species lists to easily check whether the required species inventory is complete. The same applies for the authorities that grant the exemptions. They too can use the map and species lists to easily check whether applications are complete. This will avoid extensive correspondence about supplementary information and reduce the processing times for applications.

Duration of the exemption

As a rule, exemptions for sites are granted for a maximum of 10 years. This is in line with the maximum statutory period for which an intended use can apply to a site without being implemented. Zoning plans are reviewed every 10 years. If the unimplemented use is included in the plan again, the period of validity of the temporary nature exemption can be extended for a further 10 years.

One year before the expiry of the exemption or the clearing of the temporary nature area, the area must be monitored or a new inventory must be drawn up to determine what species are present. This is to ensure that the correct duty-of-care measures are taken. The competent authority needs to be consulted on the monitoring only if an application for renewal of the temporary nature exemption has been or will be submitted.

Exemption requirements

When the land is ready to be used, the temporary nature area must be cleared. Clearing will have an impact on the plants and animals that are present. It is an integral part of the principle of temporary nature that the area will be cleared at some point. Given that the positive effects of temporary nature outweigh the negative effects of the clearing – as explained earlier, there is no negative impact at the species level – the Ministry will grant exemptions for temporary nature. But this does not release the initiator from the statutory duty of care to clear the land in a careful manner and avoid damage to plants and animals as much as reasonably possible or keep such damage to a minimum (mitigate, not compensate). These conditions will be set out in any temporary nature exemption. In practice, this is not necessarily a major issue. It is usually known in advance that the temporary nature area will be removed and work will begin towards the intended use. Starting the work outside of the breeding season solves problems related to nesting birds and negative publicity, but if starting during the breeding season is anticipated, that is also possible. The area can be made unsuitable for nesting before the breeding season begins. The clearing would have to be done under the supervision of an expert ecologist specialising in the species in question.

Maintenance and design of temporary nature areas

Temporary Nature does not require any kind of design, use and/or maintenance. Obviously, the area can be made more attractive for animals, plants and recreational users. Additional measures are optional. It is intended that this will connect the temporary nature as much as possible with the natural potential of the area and its environment (quick wins that yield good results with little effort). It is not intended that drastic measures be taken to design or manage a temporary nature area. The following guidelines may be used:

- Planting grasses, crops, stands of trees and similar is agriculture, not temporary nature. Large-scale projects to create a garden or park-like landscape are also not temporary nature.
- Intensive grazing, mowing during the growing season, mowing more than once a year, and mowing or otherwise controlling 'weeds' that are causing no harm to the environment are also not permitted.
- Small-scale projects to stimulate biodiversity are permitted, such as: sowing mixed native flower seeds, minor maintenance (if beneficial for biodiversity) such as light mowing or grazing once a year, as well as projects to attract pioneer species such as removing all or part of the top layer of soil, bringing in sand fill, digging a pond or creating a natural wall. Creating an unsealed walking path is permitted. Equipment may be stored on no more than 5% of the land.
- Fast-growing trees may be uprooted. 'Weeds' that are harmful to the environment may be controlled (e.g. thistles, ragweed).

Temporary nature and recreation

In principle, temporary nature is also usable nature, but access to the land may require permission from the owner. In some cases, such as those involving hazardous situations, it may be necessary to restrict access to all or part of the land. Recreation may not impede the development of biodiversity. Intensive use is not compatible with the temporary nature concept. This includes organising events or festivals or using the land as a temporary car park.