

## **Report on a Visit to Germany**

### **27-29 September 1990**

#### 1. Objective

To follow up Montreux recommendation C.4.9.4. on Leybucht, through application of the Monitoring Procedure.

#### 2. Programme

Thursday 27 September 1990: Travel by train from Den Haag to Oldenburg (after meeting at Netherlands Agriculture Ministry on wise use). Met at Oldenburg station by Mr. Arndt Meyer of the Bezirksregierung Weser-Ems, Lower Saxony Environment Ministry.

Friday 28 September 1990: Travel to Leybucht with Mr. Meyer. Meet Jens Enemark, Common Wadden Sea Secretariat at Greetsiel. Visit Leybucht with Messrs. Meyer & Enemark. Return to Oldenburg with Mr. Meyer.

Saturday 29 September 1990: Travel by train Oldenburg-Bremen, by plane Bremen- Frankfurt-London, and by coach Heathrow-Gloucester.

#### 3. Background

The Leybucht (part of Federal Republic of Germany's Ramsar site of Ostfriesisches Wattenmeer mit Dollart, designated in 1976) has been discussed at all four of the Ramsar Conferences to date. It is one of the few remaining large bays in the Wadden Sea and there have been proposals to enclose it, by building a dike across the mouth, whether for reasons of coastal protection, agricultural reclamation, or maintenance of shipping. At the conferences in Cagliari, Groningen and Regina, the delegation of the Federal Republic indicated that the ecological character of the Ramsar site would be maintained.

At the IWRB Symposium on Geese, held in Kleve, Federal Republic of Germany, in February 1989 (at which the Ramsar Bureau was represented by the Conservation Coordinator), a representative of WWF Germany spoke of dike-building measures already under way. In July 1989, the Bureau received a document from WWF Germany, which indicated that - in the opinion of the legal expert commissioned by WWF - the operations at the Leybucht violated both the Ramsar Convention and the EC Bird Directive. The Bureau submitted this document to the Federal German Government, and received a detailed reply, dated 23 December 1989 (attached). This letter states that designation under the EC Directive (and presumably under Ramsar) "does not constitute a protection declaration under national law"; protection is given by a Lower Saxony ordinance "which does not extend to the whole bay, but rather stops at the eventual foot of the dykes in construction at the moment". The letter gives extensive details of new dyke-building to provide coastal protection, to ensure "inland draining" and to allow fishing cutters from Greetsiel to have direct access to the sea.

The report of the Federal Republic of Germany to the Montreux Conference indicated, in its section on the Leybucht (attached), that the line of the dyke was being altered for inland draining and shipping access to Greetsiel and that 740 hectares of the Ramsar site would be affected; however, because of the measures planned there would, in the medium term, be no degradation of the site. At Montreux, it was agreed that the Ostfriesisches Wattenmeer mit Dollart should be included in the record of Ramsar sites which were likely to be affected by a change in ecological character - and was as a result a prime candidate for application of the Monitoring Procedure. A recommendation specifically referring to Leybucht was approved, calling on the Federal Republic of Germany to provide additional information on measures being taken at the Leybucht, to maintain the ecological character of the Leybucht, and to take appropriate initiatives for compensatory measures.

In order to follow up the Montreux recommendation, I suggested to Dr. Dieterich, who had been a member of the delegation of the Federal Republic of Germany at Montreux, that I might make a brief visit - in the framework of the Monitoring Procedure - to Leybucht after the meeting on the wise use project in the Netherlands on 27 September 1990. Dr. Dieterich welcomed the suggestion warmly and said he hoped to produce a report on the Leybucht for the meeting of the Standing Committee on 15-17 October 1990. He put me in touch with the regional authorities of Lower Saxony, Messrs. Luderwaldt and Jörn. They in turn contacted Mr. Arndt Meyer, who is based in Oldenburg and is the Lower Saxon official directly responsible for the Leybucht.

In the meantime, WWF Germany had made a complaint to the European Commission about the dyke-building measures; the Commission considered the complaint justified, and forwarded it to the European Court; the Court's judgment is expected in mid October 1990. Furthermore, following a change in the regional government of Lower Saxony, the new Environment Minister Frau Griffahn stated at the Wadden Sea Conference on 14 September that the plans for the dyke building would be changed (much of the building has already been carried out, but the revision should ensure conservation of some surviving raised saltmarsh); she also commented that she would meet the objections of the NGOs which had made the complaint. These statements clearly changed the whole atmosphere surrounding the Leybucht issue.

#### 4. The current situation in Leybucht

A detailed report on my short visit, including recommendations, is being prepared in English and German in the framework of the Monitoring Procedure and will be submitted to the Federal Government and the Lower Saxony authorities. The present report therefore, presents a rapid summary of the situation and recommendations.

I was informed by Mr. Meyer that the Lower Saxon cabinet had agreed in 1981 on the following principles:

- Enclosure (dyking-in) of the whole Leybucht would not be carried out;
- Increasing of the height of the dykes was necessary;
- Outflow to the sea from low-lying land behind the dykes should be ensured through gravity, rather than by pumping; (The use of the German term "Entwässerung", by which natural outflow is meant, has caused confusion here, since "Entwässerung" could also be interpreted as

drainage);

- Direct access to the sea for fishing cutters from Greetsiel should be maintained.

The first two of these principles are accepted by all. In order to give substance to the third and fourth principle, a new system of dykes including a sluice, jutting out into the sea (hence its German name of “Nase” - nose) has been built. It enables water to flow direct from behind the dykes to the sea, and allows the 30 fishing cutters of Greetsiel to reach the sea via a newly excavated channel and a newly built sluice. Hitherto they had reached Greetsiel by a natural channel, which required repeated dredging.

The “nose” (currently a building site with cranes, dredgers and massive earth-moving equipment) has been built to meet the strongly-expressed demands of local people; the Lower Saxon and Federal authorities, referring to legislation in operation at the times the decisions were taken, can undoubtedly justify their decisions and subsequent actions. The actions taken are technologically refined and subtle.

Nevertheless, it cannot be denied that the “nose” represents a major change to the appearance and functioning of the Leybucht. Already it appears that sedimentation behind the nose (in the lee of the prevailing WSW winds) is greater than expected. One wonders whether, rather than taking the new channel and sluice to the North Sea, the local fishermen working on the cutters may not drive to Norddeich (20 minutes by car) and reach the open sea from there. One wonders, too, whether use of electrical pumps, rather than natural outflow, would really have been so terrible. While appreciating the desire in 1981 to meet the wishes of local inhabitants, it is difficult to believe that the same decision would be taken nowadays, in the light of the Federal Republic’s international obligations under Ramsar and the EC Bird Directive. It may be that, in future, greater attention should be given at Länder level - particularly in view of the coming reunification of Germany and the establishment of new Bundesländer -to international obligations accepted by the Federal Government.

## 5. Compensation measures

The question arises of compensation measures to be taken for the 740 hectares enclosed within the nose. It is already intended that this area (which will include an artificial lake or “Speicherbecken”) will be declared a nature reserve. It is likely to be comparable to Hauke-Haien-Koog in Schleswig-Holstein, which has become an important site for waterfowl; nevertheless, it will be a new artificial wetland, quite different from the tidal mudflats and saltmarsh it replaces. The current train of thought in Ramsar is away from artificial sites even if they provide good waterfowl habitat, and in favour of maintaining original wetland ecosystems. I understand that, in compensation for the “nose”, it is proposed to remove the “Sommerdeich” (or low dyke restricting summer flooding on the biggest high tides) in two places, one inside the Leybucht and the other beyond Norddeich; this would allow saltmarshes to reconstitute themselves naturally.

Furthermore, if the statements made by the Lower Saxon Environment Minister are put into practice, small sections of saltmarsh adjoining the Stortebecker Deich will not now be enclosed by new dykes.

## 6. Dollart

The Montreux Recommendation registered the Conference's satisfaction at information about the abandonment of the harbour construction project at Dollart, and the consequent maintenance of the ecological character of this section of the Ramsar site. It now seems universally accepted that the extension to Emden harbour, which would have severely affected the Dollart, will not go ahead. It appears that the Netherlands' Government did not wish to oppose the proposal, in a spirit of good neighbourliness; on the other hand, it never formally approved the proposal either.

There is in the Dollart (as there was in Leybucht) a permanent problem of channels to fishing ports becoming clogged by mud and sand, and therefore of dredging. A place needs to be found for the dredged material, and this will undoubtedly be a future issue at Dollart.

## 7. Contacts with other international agencies

As indicated above, the European Commission has made a complaint about the situation at Leybucht to the European Court. The Court's ruling is awaited with interest in all quarters. The present application of the Monitoring Procedure has been carried out in close cooperation with the Commission's DG XI.

It was particularly valuable to be able to visit the Leybucht in the company of Mr. Enemark of the Common Wadden Sea Secretariat. Mr. Enemark emphasized that much of his work was based on Ramsar provisions; his intimate knowledge of other sections of the Wadden Sea was specially relevant. He was happy to learn that the meeting on the wise use project held in Den Haag on the previous day had suggested the Wadden Sea as one example of wise use to be developed under the project.

## 8. Recommendations following the present mission

The recommendations made in the Monitoring report are as follows:

- (a) The future dyke line along the Stortenbecker Deich should not enclose any existing areas of saltmarsh.
- (b) Compensation measures for the 740 hectares affected by construction of the "nose" should include at least:
  - establishment of a legal nature reserve over the whole area outside the dyke;
  - establishment of a nature reserve covering the whole area inside the dyke;
  - breaking down of the Sommerdeich in two places, within Leybucht and beyond Norddeich.
- (c) Contacts between the Ramsar Bureau and the German authorities should be strengthened, both at federal and Länder level, in relation to application of the Ramsar Convention. This could be effected by more formal and regular meetings of the German Ramsar Committee. This matter is of major importance, given the exemplary role which advanced conservation countries like the

Federal Republic of Germany should play in the Ramsar Convention.

(d) Contacts between the Ramsar Bureau and NGOs in Germany could also be strengthened, as agreed in Montreux Conference Document C.4.12 on Partnership.

(e) Contacts between Ramsar Parties with comparable wetlands should be further promoted. Thus, similar questions of whether new saltmarshes would arise naturally if dykes were built have also arisen at the UK Ramsar site of the Wash.

Michael Smart, 29 September 1990

[Note. Section 4 of this report describes this document as a summary of a longer Monitoring Procedure report. This, if it exists, has not yet been located.]