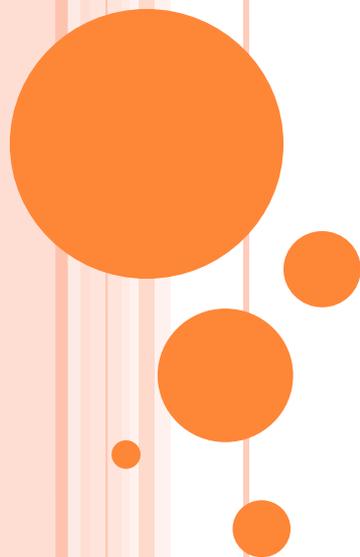


# Boerema & Van den Brink B.V.

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## **The Oostvaardersplassen: a true example of wildlife management, or not?**

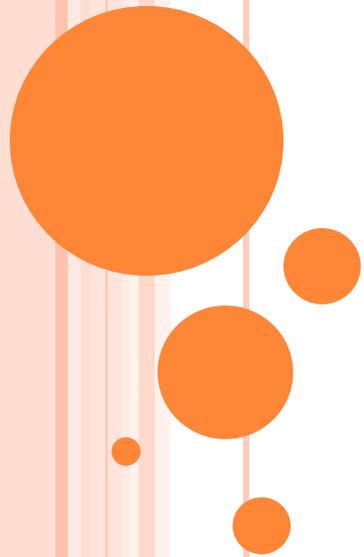
### **Some facts about the Oostvaardersplassen (OVP):**

- **About 5000 hectares of water, swamps and fields;**
- **Since 1983 introduction of large herbivores, Heck cattle, Konik horses and red deer;**
- **At the end of summer a number of about 5000 large grazing animals are present in the OVP;**
- **Migration is impossible, the site is fenced in;**
- **About 30% of the population dies during winter, mainly because of starvation;**
- **No natural predators for large herbivores.**
- **Staatsbosbeheer (public body) is managing the OVP**

What do the Oostvaardersplassen look like?

<https://www.youtube.com/watch?v=RjOCmw24lKg>

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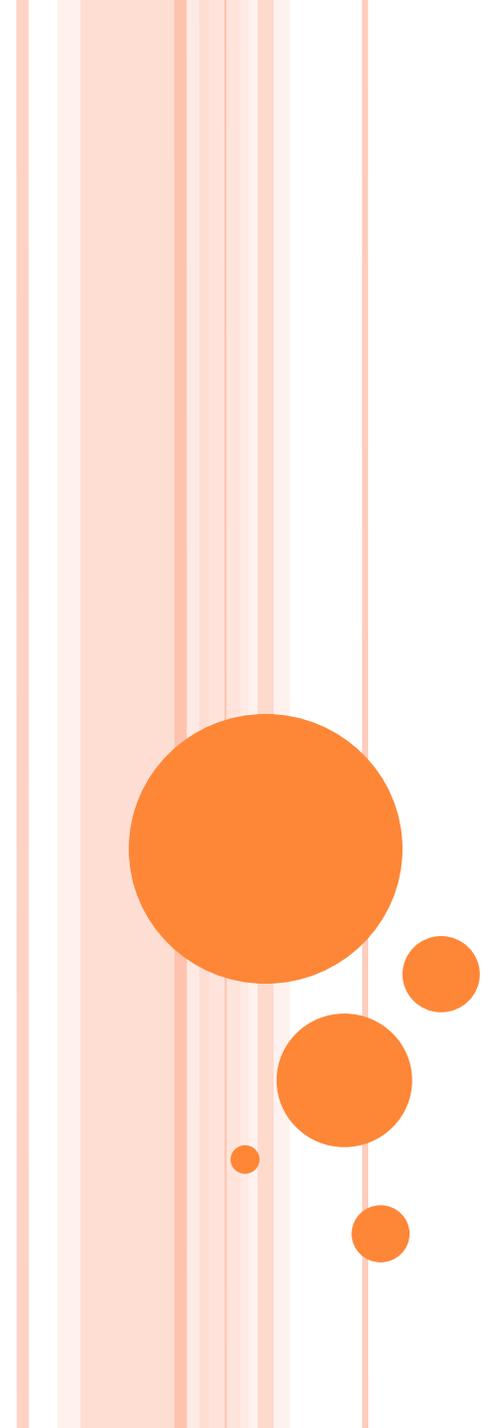


## What are the (management) issues?

[https://www.npo.nl/eenvandaag/14-09-2017/POMS\\_AT\\_2037758](https://www.npo.nl/eenvandaag/14-09-2017/POMS_AT_2037758)

<https://www.youtube.com/watch?v=FWvFAGWwmeg>

- **Rich feeding grounds during summer, bad in winter;**
- **Fence;**
- **No predators;**
- **Starvation as a way of dying;**
- **Too much grazing is contradictory to the goals set for the conservation of birds.**



**Main policy for the Oostvaardersplassen: nature prevails, in principle no human intervention (no management)**

**What does the law make of this?**

**Two types of (European) legislation:**

- **Law concerning the (protection of) wildlife**
- **Law concerning domestic animals, or animals kept by humans (including veterinary care)**

## Law concerning the (protection of) wildlife (i.g.)

- **European Birds directive (2009/147/EC)**
- **European Habitats directive (92/43/EC)**
- **Conventions of Bern, Bonn, Ramsar**
- **Law concerning domestic animals, or animals kept by humans i.g. (including veterinary care)**
- **Directive 98/58/EC on the protection of animals kept for farming purposes**
- **European Convention for the Protection of Animals kept for Farming Purposes**

## Differences and similarities in protection of domestic animals or wildlife

### 'Domestic' animals:

#### Five Freedoms:

- Freedom from hunger and thirst
- Freedom from discomfort
- Freedom from pain, injury and disease
- Freedom to express normal behaviour
- Freedom from fear and distress

## Protection of wildlife:

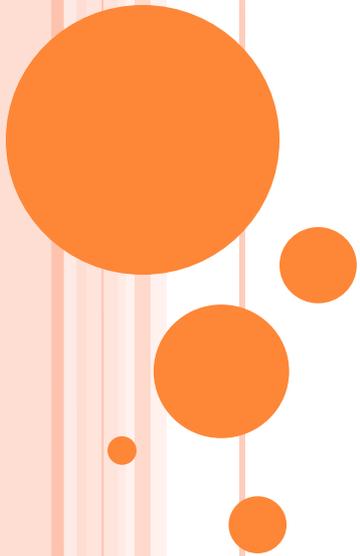
- Mostly reduced to written standards about the quality of their environment (habitattypes, or prohibition of deterioration or destruction of breeding sites or resting places)
- Implementation of a system of strict protection for the animal species listed on certain Annexes of the agreement / directive, mostly including, prohibiting:
  - (a) all forms of deliberate capture or killing of specimens of these species in the wild;
  - (b) deliberate disturbance of these species, particularly during the period of breeding.

## Implementation of these standards:

- **Lex specialis for (some) domestic or kept animals, based on the ‘five freedoms’ and ‘protected (wild life) species’**
- **General duties of care principles for other animals or wildlife in general**
- **Art.1.11 Nature Conservation Act: Everyone should take adequate care for (...) animals living in the wild and their environment.**
- **Everyone should abstain from actions that have a negative impact on wild life, or at least minimize negative impact.**

## Implementation of these standards:

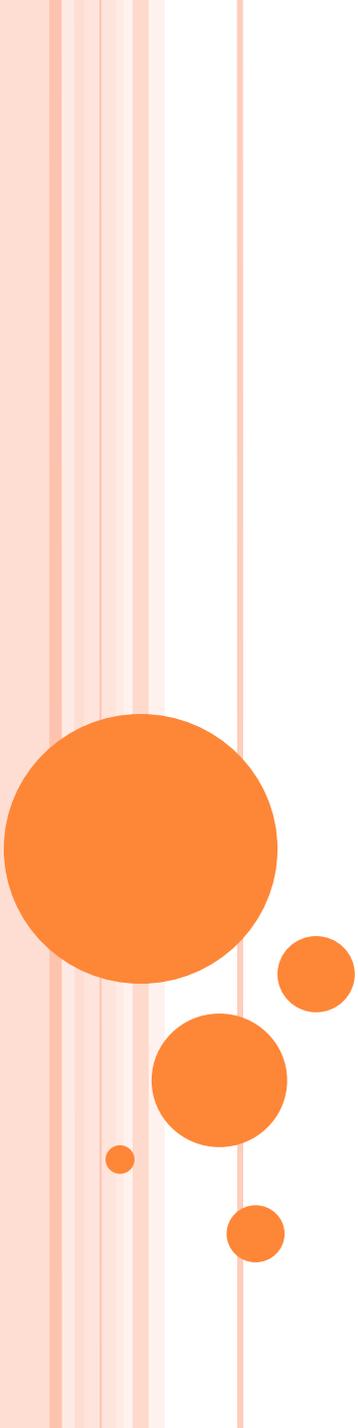
- **Art. 2.1 Wet dieren (Act on domestic Animals):  
Everyone should take adequate care of animals  
in need.**
- **Art. 2.1 Wet dieren is applicable to all animals,  
not only domestic ones (also on wild life)**



## Status of the Oostvaardersplassen: wildlife, or not?

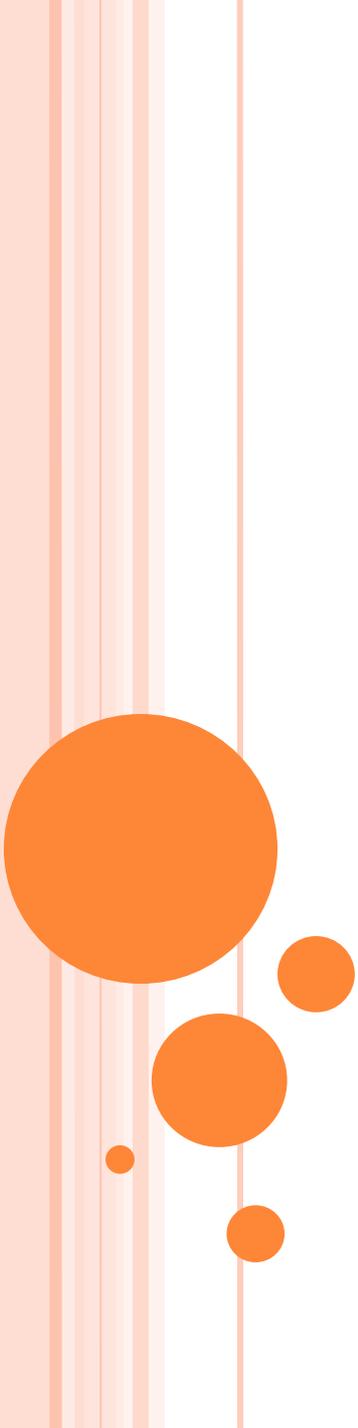
- The Oostvaardersplassen were designated a Special Protected Area (SPA) for the conservation of Birds according to the European Bird Directive



- 
- The large herbivores were introduced as a management tool (grazing) for the protection of birds.
  - Considering Koniks, Heck cattle and red deer:
  - Only protected species (wildlife) is: red deer (Nature Conservation Act)
  - Konik horses or Heck cattle: not protected by specific wildlife law



**Which set of rules is relevant for the protection of large grazing animals in the Oostvaardersplassen?**



**Case Law:**

**District Court:**

**RECHTBANK MIDDEN-NEDERLAND van 22 juni 2016, zaaknummer / rolnummer: C/16/415043 / KG ZA 16-354, ECLI:NL:RBMNE:2016:3355**

**Court of Appeal:**

**GERECHTSHOF ARNHEM-LEEWARDEN van 11 april 2017, zaaknummer gerechtshof 200.195.797, ECLI:NL:GHARL:2017:3122**

Case Law: The Court of Appeal states:

“These large herbivores have to be considered as wild life, but they are treated as if they were domestic by the management of the Oostvaardersplassen (Staatsbosbeheer)... Under these circumstances there is no violation of the duty of care that has to be taken in consideration in the management of these large herbivores, because of the managementpolicy of Staatsbosbeheer.”

“This policy implies (in short) that individuals in poor condition are culled in winter; there is some form of proactive culling in emergency circumstances and artificial food will in principle not be provided.”

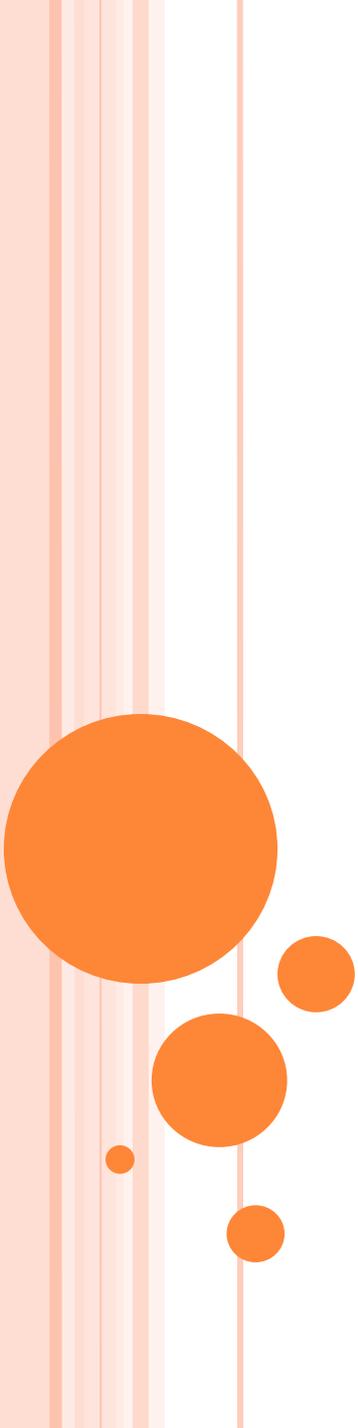
## Some general and legal considerations on this verdict

1. The Court states that the large herbivores in the OVP have a status 'in between' fully wild and domesticated/managed.

This means that both animal-oriented care and environment-oriented care has to take place.

2. The OVP are designated a SPA (Birds Directive). This means that the goal for environment-orientated management should be an optimization of the conditions for the birds for which this area was designated.

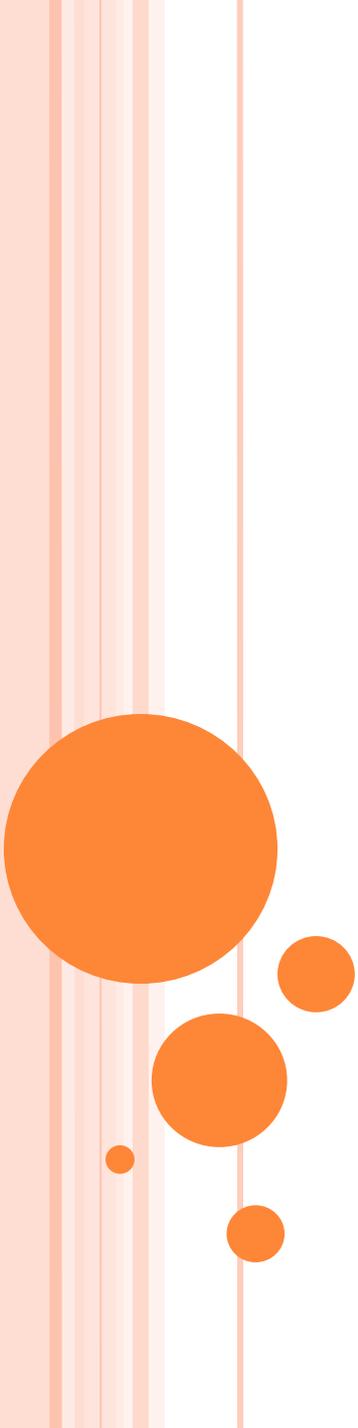
3. The Bird Directive indicates the Member-State should guarantee a 'favourable conservation status' for birds. The numbers of large herbivores should legally be considered a management tool for the protection of birds and therefore be managed, with this goal in mind



4. By refusing to manage the numbers of large herbivores, the State acts in conflict with the duty of care laid down in article 1.11 of the Dutch Nature Conservation Act, and the Bird Directive itself, if the SPA is deteriorating because of the presence of large numbers of herbivores.

5. Staatsbosbeheer argues that the shooting of large numbers of healthy animals leads to ‘moral and practical objections’. Moreover shooting will be ‘significantly disturbing’ the (protected) birds.

6. Animal orientated care for large herbivores should be placed within this concept of taking care of wildlifes interests. But: Environment orientated care *cannot overrule* animal orientated care, as both duty’s of care have sound legal European and international basis.



**7. The duty of care formulated in the Wet dieren states that 'adequate care of animals in need' should be provided.**

**8. Killing of an animal can in specific circumstances be an adequate implementation of this duty of care.**

**9. Providing 'adequate care' can in my opinion not be restricted to 'killing' considering the wording of the 'duty of care' as laid down in het law.**

**10. Without a top predator present, wildlife in the OVP should be actively managed. Birthcontrol, translocation of the exeeding animals i.g. should be seriously considered in the management of the OVP.**

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