

Good Governance for the Wadden

The organisation of decision-making for sustainability

by

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Paper written for presentation at

The Workshop on The Workshop 4 (WOW4)

Workshop in Political Theory and Policy Analysis, Indiana University (IU)

Bloomington (IN), USA, June 3-6, 2009

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1. Introduction

A little over 40 years ago Garret Hardin published his befamed article in *Science*, the internationally renowned scientific magazine, which has since come to be regarded as a classic essay on environmental and nature conservation policy². In this article, Hardin drew attention to *the tragedy of the commons*, the natural resources that belong to everyone and consequently to no one. Common Pool Resources (CPR) – as the Commons are sometimes also referred to – are accessible to many users. The valuable yields can be harvested at marginal (rather than actual) personal costs. The ‘demand’ exceeds the ‘supply’. Overtaxing and overusing would ruin and undermine those natural resources considered to belong to the common pool – air, clean water, forests, the marine fish stock, inland lakes, irrigation systems, grasslands, natural reserves, wetlands, marine environments, river basins, etc.

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² Gareth Hardin, The Tragedy of the Commons, in *Science*, 162, 1968: 1243-1248

The depletion of natural resources – also of common pool resources – is not an unavoidable mechanical process. There is room to develop a view and to create choices. The human-environment interaction, which is part of the Commons problem, is open to reflection and deliberation and can be influenced and changed. To a certain extent, the future of the Commons is makeable, and the structure of how decision-making is organised plays a crucial and strategic role in this.

By all international standards, the Wadden Sea can be considered an international Common, both as part of an international – in fact, global – system of habitats and biotopes joined by nature and as a high-quality area of natural beauty in Northwestern Europe with a significant nature-historical value for the Netherlands and far beyond. In 1976 the Staatsen Commission spoke of the ‘Wadden values’, which could be divided into the three areas of (a) natural science, (b) landscape and (c) cultural-historical elements: ‘...the total of those factors – to the extent that modern science has made them known to us – that give the area its unique character.’³ From an international governance perspective, the Wadden Sea can also be considered to belong to a specific and extremely difficult category of common pool resources: the *multiple-use Common*⁴. This is not one specific group of resources or possible uses – forest, water reservoir, grazing, and fish stock – that have value for many and are being threatened by overuse. As a Common the Wadden Sea can be used in various ways. In addition to being a recognised high-quality area of natural beauty and recreation, it is also in use as an area for military manoeuvres as well as for shrimp and shellfish fishing, it is a port of access to harbours and there are geological possibilities for extracting natural gas. In general, the management and administration of a multiple-use Common is extra complicated in comparison to that of a singular Common.

³ Commissie Toekomstige Bestuursstructuur Waddengebied, *Bestuur en Beheer van het Waddengebied*, Harlingen, Januari 1976: 29 (further: Staatsen Commission)

⁴ Victoria M. Edwards, Nathalie A. Steins, Developing an Analytical Framework for Multiple-Use Commons, in: *Journal of Theoretical Politics*, 10 (3): 347-383

In this essay we will place the problems surrounding the governance of the Wadden Sea in the theoretical perspective of the governance of the Commons (section 2). Working on this basis, we will formulate a number of assumptions to evaluate good governance for the Wadden (section 3). We will then apply these assumptions to a short analysis based on both the information from the file of the Adviesgroep Waddenzeebeleid (AGW) [Advisory Group for the Governance of the Wadden Sea] and on our own observations and experience (section 4). Conclusions and recommendations derived from theory and research of commons management will be given in section 5.

2. The Wadden Sea: a unique area with a well-known problem

The complexity of the governance and administration of a (multiple-use) Common is apparent in daily practice. Those who study the development of the Wadden area – with the Wadden Sea as a component part – and its administrative structure are soon struck by the numerous organisations involved in one way or another in its administration and management. If people want to form a general picture of the situation, they will have to deal with a large number of various organisations and individuals. Independent of whether or not it should exist, there is clearly not just one office for the Wadden Sea or for the entire Wadden area. Five national government ministries are primarily involved in the administration and management of the Wadden Sea: Verkeer en Waterstaat (V&W) [Transport and Water Management], Landbouw, Natuur en Voedselveiligheid (LNV) [Agriculture, Nature and Food Safety], Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (VROM) [Housing, Spatial Planning and the Environment], Economische Zaken (EZ) [Economic Affairs] and Defensie [Defence]. Given the international, administrative and financial interests involved, the Ministerie van Buitenlandse Zaken (BuZa) [Ministry of Foreign Affairs], the Ministerie van Binnenlandse Zaken en Koninkrijkrelaties (BZK) [Ministry of the Interior and Kingdom Relations and the Ministerie van Financiën (Domeinen) (FZ) [Ministry of Finance (State Property)] also play a role. Three provinces – Groningen, Friesland and Noord-Holland - play a role in the formal structure. There are also 18 municipal governments: 5 island

municipalities and 13 mainland municipalities. There is one advisory council, the Raad voor de Wadden (RvW) [Council for the Wadden], that originally was established as a council of experts of 14 members and a chairman. There is an international platform for discussion and coordination between the Netherlands, Germany and Denmark. In the background – guidelines for habitat, water, basins and birds – various European Union organisations are beginning to play a more visible and, predictably, significant role. Attempts to further anchor the natural-history and culture-history value of the Wadden Sea in international treaties and organisations involve more international branches and networks. In 2002 International Maritime Organisation (IMO) qualified the Dutch, German and Danish Wadden Sea as being an ‘especially vulnerable maritime area’, the fifth in a row that includes, for example, the Great Barrier Reef in Australia and the waters around the Florida Keys in the United States. Attempts are being made to include the Wadden Sea on the World Heritage list.

Operationally speaking, not all of these organisations are equally powerful and some connections are more important than others. The Dutch national government is the primary responsible party. The policy vision on Wadden Sea in its present form and conception – in which the ecological and natural values of the area are given priority – dates only from 1970. Prior to that date, the Wadden was seen and treated as a hydraulic subject. The government has been trying to steer the development of the area and operate in accordance with the Key Planning Decision (PKB) procedure, the first of which dates from 1980. The initiative here lies with the ministry of VROM. The Key Planning Decision influences plans and policies at the provincial and municipal levels. The Ministries of V&W and LNV play a role in other important national laws and regulations, such as water management legislation and the Nature Conservation Act. Moreover, they are important in implementing national laws and regulations pertaining to the Wadden Sea, especially issuing and monitoring permits.

In order to gear these organisations to one another, a number of discussion and coordinating groups have been formed. At the time of our research, horizontal coordination at the national

level took place via the official Interdepartementale Waddenzee Commissie (IWC) [Interdepartmental Wadden Sea Commission], which consisted primarily of representatives of VROM, LNV, V&W, EZ and Defence with BZK, FZ (State Property) and BuZa in the background. At the regional level, horizontal discussion took place via the Stuurgroep Waddenprovincies (SWP) [Steering Group Wadden Provinces] consisting of the provinces of Groningen, Friesland en Noord-Holland.

Vertical discussion between the various layers of government took place via the Coördinatie College Waddengebied (CCW) [Coordinating Board for the Wadden Area], which is made up of the 5 most directly involved members of the government, representatives of the three provinces involved and the chairmen – mayors – of the Vereniging van Waddenzeegemeenten (VvW) [Association of Wadden Sea Municipalities], this being composed of the 13 coastal municipalities, and the Overleg Orgaan Waddeneilanden (OOW) [Consultation Board for the Wadden Islands], which represents the five island municipalities.

The Regionaal Coördinatiecollege Waddengebied (RCW) [Regional Coordinating Board for the Wadden] formed the platform for horizontal discussion about implementation for the various sectors in the region. The regional managers (representative and mayors) in their function as chairmen of the Stuurgroep Waddenprovincies (SWP; provinces of Friesland, Groningen and Noord-Holland), the Vereniging van Waddenzeegemeenten (VvW) and the OverlegOrgaan Waddeneilanden (OOW) met with the regional representatives of the Ministries of VROM, LNV, V&W, EZ and Defence. In addition to this, an Ambtelijk Waddenoverleg (AWO) [Executive Wadden Consultation Board] consisting of the secretaries of the CCW, the ICW, the SWP, the VvW and the OOW together with representatives of the Ministries of LNV and V&W. This body, the ‘real’ body for managerial consultation sporadically convened and had, for example, in early 2004 not met for 2.5 years.

The various government bodies each operate with their own regional directors, maritime functions, permit granters, inspectors and other supervisors work both next to and often independently of one another. In addition, the departments of general administration at the national level – ‘The Hague’- do not themselves form a monolithic entity; rather, they have diverse divisions with differing insights and interests within one and the same ‘file’ and this sometimes within one and the same department.⁵ Regional inspectorates over time acquired a reasonable amount of organisational independence. All in all, the operational aspects of the management of the Wadden made a fragmented impression on outsiders, inhabitants, users and other observers of the area. This impression deviated from that held by those who work daily within this structure and who had learned to deal with it. However, even for them the situation becomes considerably more complicated if the government-centred picture is replaced by the knowledge that actual developments in human-environmental systems can never be determined or managed by the government.

This organisational overview still presents a very ‘government-centred’ picture. In addition to the above, district water boards, private grounds managers, innumerable non-governmental organisations and interest groups are actively involved in the Wadden Sea. Although they have no role in the formal structure of management, they are important for a full understanding of the actual governance and management of the Wadden Sea. It has long been recognised by urban planners that it is not only the municipal government but also investors, banks, companies or other social players who actually help to determine, and thus manage, the spatial and physical aspects of urban development. And in the international practice of the Commons non-governmental players have always had an important role, a role that some believe is becoming even more important.⁶

⁵ Th.A.J. Toonen, *Divergentie door Convergentie: een vergelijkende analyse van VROM bestuursystemen*, in: G.Dijkstra, F.M. van der Meer, M. Rutgers (red), *Het belang van de publieke zaak*, Delft, 2003:85-119

⁶ Elinor Ostrom, *Governing the Commons: the evolution of Institutions for Collective Action*, Cambridge University Press, Cambridge, 1990; R.F. Durant, Y Chun, B. Kim, S. Lee, *Towards a New Governance Paradigm for Environmental and Natural Resources Management in the 21st Century?*, in: *Administration and Society*, 35, 6, January 2004:664

Under the flag of stewardship, the involvement of civil society in the management of the Commons is growing into an international movement. Although this does not make governments superfluous or powerless, it does have consequences for their decision-making strategies. It also makes the picture of the *de facto* administrative and managerial system for the Wadden Sea more even more complex than it would at first seem to be. In addition, it must be remembered that the Key Planning Decision procedure is limited to the Wadden Sea, which, from the perspective of urban and rural planning, has itself been defined in a specific although, from the managerial perspective, rather bizarre way. From the moment that the issue of the administrative organisation was put on the agenda, it was consciously and reasonably argued that the relevant borders should be delineated with regard to the Wadden Area.⁷ The Key Planning Decision procedure is 'only' a part of an administrative decision-making problem that, in principle, is much broader. This means that, with regard to the present borders, a considerable part of the 'hinterland' of the Wadden Sea (both on land and in the North Sea) should be taken into consideration in the analysis of the formal and actual administrative structure – even though they are not formally part of it.

In short: 'The Wadden' form a unique area of natural value and beauty, especially in the Netherlands and Europe, but also far beyond these borders. However, this unique area is confronted by a problem that, nationally and internationally speaking, is by no means unique: a complex, layered, varied and – in the eyes of many – strongly fragmented administrative and managerial organisation and design. This is a problem shared by many *Commons* throughout the world⁸. Theory, however, tells us that this complex institutional structure in itself does not have to be the cause of the problems that occur. The commonly heard sigh – particularly from the practitioners, citizens and laymen involved - that streamlining and clarity are urgently needed can also be counterproductive. It is indeed true that a successful and large-scale Common Pool Resource Management needs a clear structure in the form of '...

⁷ Staatsen Commission, *op cit*, 1976

⁸ bijv: 'The fragmentation of water management responsibilities in Canada has repeatedly hindered a coordinated national approach', GRCA/CO, *op. cit.*, June 2003: 1

(a) clear-cut and unambiguous set of rules that all participants can know and agree upon (so that it is) more likely that individuals can understand them, remember them, and follow them...⁹ However, streamlining is not a goal in itself:¹⁰

‘Simple strategies for governing the world’s resources that rely exclusively on imposed markets or one-level, centralized command and control and that eliminate apparent redundancies in the name of efficiency have been tried and have failed. Catastrophic failures often have resulted when central governments have exerted sole authority over resources’

A robust and resilient administrative organisation for the Commons – such as the Wadden Sea – demands attention be given to variety, checks and balances, self-regulation and conflict and conflict-management. ‘One form does not fit all’¹¹. This, however, is not the same as saying ‘anything goes’. Not every complex system in and of itself is a guarantee of success. It is a plea for a custom-made approach to the administration of a specific case. Perhaps a unique area requires a *Lex Specialis* – as, in fact, was proposed by the Staatsen Commission¹² - but it certainly requires a special – and thus unorthodox – administrative approach.

More or less the same variants in thoughts on the managerial configuration of and around the Wadden Sea have been circulating for a number of decades. In 1976 the Staatsen Commission summarised the following possibilities, a list which is still exhaustive even today.¹³ None of the variants was considered able to meet all of the then valid structural

⁹ P.C Stern, Th. Dietz, N. Dolsak, E. Ostrom, S. Stonich, Knowledge and Questions after 15 Years of Research, in: National Research Council, *op cit*, 2002:460.

¹⁰ Th. Dietz, E. Ostrom, Paul C. Stern, The Struggle to Govern the Commons, in: *Science*, December 2003: 1910

¹¹ Stern et al, *op. cit.*, 2002:456

¹² Cie. Staatsen, *op cit*, 1976

¹³ 1. The creation of one Wadden municipality 2. The creation of a Wadden district on the basis of a special Act 3. The creation of a mini-province in agreement with the (then valid) Act on the Reorganisation of Internal Management 4. The creation of a province 5. The creation of a Wadden water board or dividing the Wadden Sea among a number of water boards 6. The creation of a Wadden association on the basis of the Joint Regulations Act (WGR) 7. The creation of an Authority for the Wadden area with functional powers with respect to environmental protection and nature conservation 8. A Wadden Sea Authority 9. A municipal and provincial zoning of the Wadden Sea 10. Provincial zoning without municipal zoning 11. Concentrating management with one minister or one organisation 12. Creating a national

requirements for decisiveness, democracy, suitability and public participation. The time of expansive plans and managerial reorganisations has passed. Even more than 25 years ago, it is now evident that drawing up managerial blueprints and then comparing and evaluating them according to previously indicated standards will not lead to a sound solution for the Wadden.¹⁴ However, in contrast to the situation in the 1970s, the management of the Wadden area these days is no longer a *tabula rasa* for which diverse institutional options could freely be chosen. The area by now has an administrative history of its own and has gone down a developmental path. This does not mean that structural interventions are not necessary or possible, but that it is better to choose a more organic path. The question is, what kind of institutional and administrative research is needed to diagnose and assess institutional strengths and weaknesses of the existing governance system – which already is and has been undergoing some modifications – that may help to inform the institutional development of governing structures and processes to such a degree that it contributes, not so much to the simplicity but to the quality of governance for the Wadden.

3. Diagnostic Framework: Good Governance and the Quality of Governance

The last few years have seen increasingly more international attention being given to good governance. Both good corporate governance and good government governance are widely discussed issues. A further analysis shows that the governance of the Commons involves three levels:¹⁵

1. the operational choice or management level
2. the collective choice or governance level, and
3. the constitutional choice or institutional design level

(landscape) park for the Wadden area 13 Applying the Nature Conservation Act to the Wadden area 14 Drawing up an interprovincial regional plan 15. Taking a core decision about the urban and rural planning for the Wadden area., Staatsen Commission, op cit, 1976:56-57 ff.

¹⁴ Staatsen Commission, *op.cit.*, 1976

¹⁵ bijv. N.Dolsak, et al, Adaptation to Challenges, in: Nives Dolsak, Elinor Ostrom (eds), *The Commons in the New Millenium: Challenges and Adaptations*, MIT Press, Cambridge (Mass), 2003: 348; cf L. Kiser , E. Ostrom , The Three Worlds of Action, in: E.Ostrom (ed), *Strategies of Political Inquiry*, Beverly Hills,1982

Different and sometimes conflicting criteria for good governance apply to these three levels of governance and reform.¹⁶

3.1. The operational (management) perspective: responsive, goal-oriented and efficient

The question at the operational level is how given, often frequently combined and thus complex goals can be optimised with the help of the given means within the available time (and chronology), space and technology. Central to this management perspective is the instrumentality and utility of certain activities. Being goal-oriented and responsive to the managerial surroundings are important conditions for effectiveness and efficiency, which are usually expressed in terms of the stakeholders' satisfaction. Clear goals and a goal-oriented approach are desirable.

An important theme of the Staatsen Commission was the lack of a goal for the Wadden area as the necessary point of departure for clear and coordinated management. The Commission's final recommendations focused on the importance of legislation that would set goals and standards for the 'functional steering' of the general management (that being the territorial authorities) to protect the 'Wadden values'.

The management perspective automatically gives attention to a goal-oriented use of managerial means and to the importance of quality assurance in daily management and administration. Thinking in terms of 'shared services', bundling, combining and contractually steering the (regional) operating services – perhaps in an autonomous form – are important components of current managerial strategies for innovation. These serve both efficiency and effectiveness.

¹⁶ cf Theo A.J. Toonen, Administrative Reform: Analytics, in: B. Guy Peters, Jon Pierre (eds), *Handbook of Public Administration*, London/New Dehli, 2003:475; Theo A.J. Toonen, Analyzing Institutional Change and Administrative Transformation: a Comparative View (Reprint Toonen, 1993) in: Eric Oteneo, Nancy Lind (eds), *Comparative Public Administration: the Essential Readings*, Houghton-Mifflin, 2006 : 371-392

The attention to the importance of quality assurance in the management of the organisation has given an international impulse to attention for stewardship and conservation organisations, certainly in the management and administration of natural resources, habitats, areas of natural beauty, (marine) water basins or fishing grounds that can be considered to belong to the Commons and that are devoted to quality assurance in terms of ‘...“achievement on the ground”, namely the sustained protection of significant natural or cultural features’.¹⁷

3.2. The collective (governance) perspective: considerations, justifications and legitimacy

The issues at the governance level involve formulating and setting up the operational ‘given goals and means’ for management, the considerations that come into play and the external – public – justification of the choices that are eventually made. The governance determines the standards, the normative and the actual conditions under which management has to work and justify – or is expected to justify - these to the stakeholders. A positive side effect of the recent attention to failing corporate governance is that we again realise that the objective of good governance lies in upholding the validity and integrity of the organisation in the light of its basic institutional – systemic - missions. The goal is to anchor and enhance the trust in or, in other words, the legitimacy of the organisation’s activities.

The management of a multiple-use Common such as the Wadden Sea is by definition a matter of dealing with conflicting interests. Acknowledging and defining legitimate rights and interests as the basis of a process of representing interests is an essential and unavoidable part of the management of the Commons. Conviction, negotiation and handling conflicts should be central points of attention when creating a Wadden management. Those who regard the management of the Commons as simply a matter of ‘expertise’ and ‘scientific

¹⁷ Heather Millar, *Successful Stewardship and Conservation Organisations – Case Studies and Best Practices*, The Leading Edge: Stewardship and Conservation in Canada 2003, British Columbia, 2003:4

evidence' will be disappointed. This attitude provokes a predictable scientific war, as in the recurrent Waddensea debate about cockle fishing. After a time, everyone has lost track of the knowledge that we actually have about the ecological development of the area and no one trusts the 'scientific insights' that are so essential to sustainable decision-making.¹⁸

If there is one place where the need exists for evidence-based decision-making then it is in the governance and management of the largely virtual Commons. Science and expertise are important sources for the legitimacy of policy. It is science that has to make the present state of and the expected developments in the 'Wadden values' visible to everyone. In order to enable science to fulfil that role and to avoid it becoming part of a conflict of interests, the management of the Wadden must recognise that conflicting interests are unavoidable and should be treated accordingly. The spiral in which research forms part of a bureau-political lobbying process can never be completely broken.¹⁹ But it can be slowed down with the help of (international) systems of experts, expertise management, monitoring, etc. Yet: 'Science is good at making complicated calculation models but it gets pushed into a tight corner by all that talk about cockle fishing . . . Science presents just a few facts and a lot of uncertainties.'²⁰ There have to be opportunities for mediation and other 'low-cost' forms of dealing with and resolving conflicts rather than avoiding them or resorting to unavoidable (negative) coordination. The alternative is that people will mobilise all possible external bodies, up to the Council of State and international (European) courts, to prove that they are right.

¹⁸ Th. Dietz, E. Ostrom, P.C. Stern, The Struggle to Govern the Commons, in: *Science*, vol 302, 12 December 2003:1908

¹⁹ 'For instance, it is common for fishing communities to believe that fish stocks are not being depleted, even though the scientific evidence indicates otherwise', Pretty, op. cit., *Science*, 2003:1914

²⁰ Maarten Huygen, De Reizende Commentator, in: NRC, zaterdag 31 januari en zondag 1 februari 2004, *Opinie en Debat*, p.17

An important method for generating trust, often referred to as 'social capital', is searching for ways of working together: 'bonding, bridging and linking'²¹. This has little to do with an evidently questionable wish to use the Dutch polder model, a hotly disputed if not contested concept of institutional fatigue overshadowing the willingness to accept collaborative decision-making as the ultimate solution to governance and resolving social conflict.²² Rather, there must be the insight that a one-sided approach, even that strongly sounding 'zero tolerance', can be realised only under exceptional and in many ways expensive circumstances:²³

'Whether enforcement mechanisms are formal or informal, those who impose them must be seen as effective and legitimate by resource users or resistance and evasion overwhelm the commons strategy.

Much environmental regulation in complex societies has been 'command and control'. Governments require or prohibit specific actions or technologies, with fines or jail terms possible for rule breakers. If sufficient resources are made available for monitoring and enforcement, such approaches are effective. But when governments lack the will or the resources to protect "protected areas", when major environmental damage comes from hard-to-detect "nonpoint sources", and when the need is to encourage innovation in behaviours or technologies rather than to require or prohibit familiar ones, command and control approaches are less effective. (On top of that, TT :) They are economically inefficient in many circumstances'

Involving stakeholders and resolving conflicting interests in a transparent way are important for the legitimacy and the authority of the management of a Common like the Wadden. This

²¹ Jules Pretty, Social Capital and the Collective Management of Resources, in: *Science*, vol 302, 12 December 2003:1913

²² Frank Hendriks, Theo Toonen (eds), *Polder Politics in the Netherlands; Viscous State or Model Polity?* Ashgate, London, 2001

²³ Dietz, Ostrom, Stern, op. cit., *Science*, 2003:1909

strategy should aim at ‘inducing rule compliance’²⁴: stimulating rather than commanding the desired behaviour and ‘managerial obedience’. In order to achieve this, there must be managerial responsibility for setting up and maintaining a professional and integrated – preferably autonomous – monitoring system that is oriented to enforcement and related to policy goals and managerial responsibilities as well as a proportional system of sanctions that provides flexible responses to violators. It is also important that those monitoring know that they are obliged to justify their findings and conclusions to the users of the Commons in order to prevent noncommitment, arbitrariness, pet notions or their own doctrines from getting in the way.²⁵

3.3. The institutional (resilience) perspective: robustness, social support and sustainability

Good governance at the institutional level includes designing and creating governance processes and a managerial organisation that are vital, sustainable and reliable. Under the influence of the situation of international security and safety, it has becoming increasingly apparent (again) that the standards and values that society demands from governments, companies or social organisations include not only democracy (governance level) and efficiency (management level) but also reliability, resiliency and decisiveness.

Under the present circumstances, sustainable means dynamic and oriented to learning, adjusting and innovating. Standing still often means moving backwards. To create solid and stable management, attention must be given to resiliency and the learning ability of managerial systems to deal with changes, ambiguities, uncertainties, crises and calamities. Management must be able to adapt. Management, and certainly that of the Commons, not only demands having trust in managing and managers but it also involves the reliability of dikes and other protective constructions, contingency plans, managerial agreements and

²⁴ *ibid.*

²⁵ *ibid.*

their enforcement, monitoring, research, the protection of rights, etc. This requires permanent adjustment to changing physical, social and infrastructural circumstances and conditions.

The purpose of institutional development is not so much efficiency or transparency in and of themselves but rather the creation of a management (of government, market or civil society) that is not only trusted by society but that is also considered to be trustworthy. Stakeholders must be confident that certain matters, such as the balanced protection of an important natural resource, can be left to the responsible bodies without qualms. Citizens and stakeholders must also be able to be certain that the management is alert to continually changing challenges. This applies to bridges, roads, dikes and calamity plans. It also applies to the management of the Wadden as a Common.

With regard to a reliable authority, the research on the management of the Commons suggests a clear delineation of the boundaries of the Common.²⁶ Assigning and respecting 'property rights' (responsibilities) and identifying groups of users form a first step in establishing a reliable managerial system that is oriented to making intelligent adjustments. Present insights into the management of the Commons point to the great importance of community-based governance:²⁷

'Delegating authority to environmental ministries does not always resolve conflicts satisfactorily' (...) Too many strategies for governance of local commons are designed in capital cities or by donor agencies, in ignorance of the state of the science and local conditions. The results are often tragic'

²⁶ Elinor Ostrom, *Governing the Commons*, Cambridge, 1990:90; E.Ostrom, *Crafting Institutions*, Lanham, 1992:69

²⁷ Dietz, Ostrom, Stern, op. cit, 2003: 1909 en 1910

In international institutional research, a prominent standard for the 'good governance' of the Commons is that the institutional design should be oriented to developing cooperation and trust and in creating social capital.²⁸

'Collective resource management programs that seek to build trust, develop new norms, and help form groups have become increasingly common, and such programs are variously described by the terms community-, participatory-, joint-, decentralized-, and co-management'.

4. Between managerial fragmentation and multi-level governance

If we look at the institutional development of the Waddengovernance from the perspective of the quality of governance and administration, a number of observations apply.

Demarcation problems: 'sea' versus 'region'

Immediately following the Staatsen Report of 1976, preference was given to the creation of a Wadden Area Authority, a managerial situation similar to the one that existed for the IJsselmeer polders – the newly reclaimed land in the former "Zuiderzee" - for quite some time. However, the comparison between the Wadden and the IJsselmeer polders fell short in a number of aspects, both substantially and administrative. For democratic reasons and to ensure broad social support, the final choice was a municipal and provincial zoning of the Wadden Sea, which up to then had not been divided into managerial zones. Added to this division was the formula of the 'functional steering' of the general management (provincial and municipal) of the Wadden area that had thus also been created for the Wadden Sea.²⁹ This would be done by means of a special Wadden Act in which the intended goal of 'the protection, conservation and repair of the natural state of the Wadden area' would be

²⁸ Pretty, op. cit., Science, 2003:1914; For a concrete elaboration see, for example: The Nottawasaga Valley Watershed Management Plan van de Nottawasaga Valley Conservation Authority:

<http://www.nvca.on.ca/watershed/>

²⁹ Ibid, p.65

documented, organised and instrumentalised.³⁰ In the end, as indicated, the Wadden Act was never created; instead, the national government chose the 'functional steering of the general area administration' from the perspective of urban and rural planning, in particular via the Key Planning Decision procedure. Since 1989 the Wadden Sea has officially been denoted as an area of natural beauty, and the first Key Planning Decision stated that policy should be formulated to 'conserve, protect and, where necessary, repair the Wadden Sea as an area of natural beauty'. The Waddensea, not the Waddenarea de jure and de facto became the focal point of the dominant governance structure aimed at managing 'the Wadden'. According to what had been advised, the Wadden Sea was divided into provincial (1980) and municipal (1985) areas. Although the spatial planning procedures in the Netherlands are about to be changed in favour of a more area-based approach, the current management of the Wadden is still dominated by the 'vertical' regime of the (national) Key Planning Decision and subsequent permitting procedures, which contains strong elements of central steering, but also basically separates the sea from the surrounding mainland and islands. In doing so it constitutes a decision-making systems, which in terms of coordination and transaction costs make it very difficult for 'community based strategies' and other forms of collaborative governance in the regions to emerge.

Intolerance for adaptive uncertainty

Some (internal) observers currently feel that the process of management is going fairly well, although improvements could be made by streamlining the existing relationships and in better coordinating them. Externally, there have long been doubts about whether these internal measures will suffice. There is talk of the desirability of giving more direct responsibilities to organisations in the Wadden area and of decentralising jurisdiction, for example in the Nature Conservation Act. It is the question whether having clearer tasks and responsibilities will solve the problems that have been so widely noted.

³⁰ See *ibid*, p.75 ff; authors' italics

There is a discrepancy between the 'external' and 'internal' picture that the involved parties have of the situation. If we take an external look at how things are managed, we cannot avoid the impression that, to some extent, a real and effective management of the Wadden as a Common is absent. To outside observers, more than among the civil servants involved, there is even some anxiety about the operation of the system as a whole. Other researchers have registered these same observations under the name of 'managerial fatigue'.³¹ Although trust and social capital are the key factors in the analysis and the international debate about the Commons, there seems to be very little goodwill in the managerial discussions relating to the Wadden. Within the existing situation, there is very little room – if any – for experimenting, doubts and uncertainty, all matters which may be considered sources of innovation and responsive management which are the characteristics of adaptive management. Everyone is supposed to 'know for certain' – doubts create 'political vulnerability'.

Rigidity through juridification

Also the Wadden, a dynamic and resilient ecological area, is placed (too) quickly in the position of being 'vulnerable'. People are afraid of a candid debate, of taking managerial risks, proposing new solutions or trying new forms of cooperation. The actors involved imagine themselves to be permanently seated at a negotiating table where the attainable prevails. New initiatives, such as the Groene Haven (Green Harbour), are regarded with suspicion, and it takes a long time before they are given a chance. People choose for certainty, for 'conservation' and 'stand still' rather than 'adaptation', and for 'establishing' things, preferably in complicated procedures and rigid rules to 'protect' the area. It would seem that the goal is not to enable development and growth of the area, but to restrict and even oppose them. Under the given conditions, sustainability often translates into 'Stand still' as the logically preferred option. For an international habitat such as the Wadden, particularly under conditions of Climate Change, standing still in many respects means moving

³¹ IMSA, Managerial memorandum, AGW Dossier, Amsterdam, 2003:5

backwards. The culture surrounding the Wadden Sea is sometimes referred to as 'obstructive planning'. For some parties, that is in fact the evident goal since it is the essence of 'conservation'. Parties dig trenches. A moratorium – no matter on what – is considered to be the safest supreme good and is thus raised to being a goal in itself. This quickly leads to opposition and a spiral of 'combative planning'. Parties fight to have their formulation of a given principle included in the Key Planning Decision since it will then at least be established for a minimum of ten years. And the same can be seen with regard to issuing permits, where stakeholders even go as far as the Council of State and the European Court. This procedure sometimes leads to decisions having to be taken again or being reversed. It always leads to delay. The governance and management of the Wadden are characterised by a large degree of 'juridification': '... the European Court will now decide if the cockle fishermen can continue.'³²

Institutionalised distrust

Parties prefer to exclude opposing interests rather than entering into a confrontation, which could lead to a clear conclusion. Economic interests are standard considered to be the enemy of the environment and vice versa. An institutionalised distrust prevails among all layers of management and towards other stakeholders. It is very difficult if not impossible to form connections between ecology, the (regional) economy, and natural gas extraction and military manoeuvres unless an external advisory group is asked to intervene. The social-economic need of redesigning old harbours and industrial areas is not connected to such ecological challenges as 'cleaning up' or an infrastructure for dismantling rather than dumping exhausted environmentally unfriendly installations.

The other users of the Wadden Sea as a multiple-use Common have to 'fight their way in' to the ecological and natural-historical importance of the area. Residents, social organisations, municipalities and companies are seen not as protectors of the area but as threats to the same. Involved parties openly accuse provincial managers of having a secret

³² *ibid.*

agenda. Other layers of management suspect that, at the provincial level, there is a strong contradiction between the economy and ecology, especially if it concerns nature preservation. The parties involved are almost institutionally forced to behave as if this were true. This also applies to other actors in the area: municipalities, citizens and social groups. They are literally excluded by the boundaries of the Wadden Sea and, if they want to participate in management, they can in fact do very little other than 'be opposed' and be irritated by 'the prohibitions'. Their managerial context is one of resignation, legal proceedings, and notices of objection or protest actions. They feel as if they are outside of the (natural) area and that they 'can look inside from the outside'.

There can hardly be better breeding grounds for antagonism to and alienation from the goal of protecting, preserving and repairing the natural state of the Wadden area. The Wadden area is a physical, cohesive and culturally-historically recognisable area. However, the borders will become 'more muddled' as time passes, both in physical and environmental terms. The goal of protection has applied to the Wadden Sea for the past 25 years. However, to realise this goal, all parties must be involved; the enforcement of laws and regulations by civil servants is not enough. The damage is demonstrable, visible and often irreversible, but often informally denied or belittled by (national) civil servants operating on the presumption: 'if it aint broke, don't fix it' and consequently show little ambition for the development and introduction of innovative adaptive governance strategies.

Special interest multi-level governance

The effectiveness of the enforcement of laws and regulations, though central to the current 'protective' governance strategy, in itself is hardly evaluated, but may be doubted. The situation is such that many parties almost automatically turn to a juridification of relationships and centralised, top-down and rather officially oriented strategies. The international discussion about European directives – Habitat, Water, Birds – takes place in a perspective

of 'implementation', preferably 'with teeth'.³³ Much less thought, if any, is given to the perspective of an internationalisation strategy in the governance and management of the Wadden as a renowned international Common. This should be a reason for the Netherlands (together with Denmark and Germany) to have a special role at international environmental conferences, international negotiations on the holes in the ozone layer, the rising sea level, the protection of the North Sea, etc. Up to now, attempts at internationalisation have left the impression that they have arisen from defensive motives in order to advantageously settle internal Dutch conflicts in the international arena by anchoring special interests in international regulations.

The consequences of this centralised pressure can be seen everywhere in the discourse on the Wadden: island residents who are amazed by the other-worldliness of applicable regulations, planning and economically motivated rationing systems, such as the number of moorings in a harbour, that have little effect in achieving the intended results, which is to prevent the harbour from expanding. The number of boats and number of moorings do not increase but boats and moorings and thus harbours become larger as does the number of passengers. At the same time, parties cannot develop the managerial strength needed to fully implement a centralised approach. Such a system at best is doomed to be tolerated. In summer, for example, there is a shadow economy for tourists that hides the actual state of affairs from the policy makers, this with all of the consequential perverse, damaging and risky developments. Not to mention the final consequences for the credibility and integrity of the system of governance and management.

Politics of blaming

The Wadden area as a whole cannot be 'locked'. This simple fact limits every form of hierarchic enforcement such as that which, in principle, is possible for natural parks. As part of the total strategy, indicating and putting aside parts of the Wadden area as 'natural parks'

³³ Impact Assessment Unit (IUA) of Oxford Brookes University, *Review of International Legal Instruments, Policies and Management in respect of the Wadden Sea Region*, Wadden Sea Forum (WSF), 2003; Startdossier AGW

can work. For the area in its totality, however, that is an illusion; because of the physical circumstances and characteristics of the Wadden area, a more open, participatory strategy of enforcement should be chosen. Institutional success stories and achievements on the ground – not the memoranda and core decisions – are needed to retain the belief in and the dynamics of nature preservation, aspects that must be won back in the case of the Wadden. Generally speaking, there is agreement about the general goals for the Wadden area – the protection of the ‘Wadden values’. The core issue is to ensure a reliable and stable structure within which further considerations, desired innovations, changes and concrete steps can be realised. Potential, proven professional administrators openly fail because they are unsure about the purposiveness and robustness with which possible administrative partners will be able to give form and content to their role as principal proceeding from the generally accepted goals of nature conservation and nature preservation. Of course, national politics will get the blame in the end. This does not provide a climate for stable and self-assured national political leadership, a presumed prerequisite for the current nationalised governance strategy to work. Without the further framework of a stable and regular cycle of strategic governance and management for the Wadden, national politics can often do nothing more than intervene in incidents, seldom not after the fact. And the publicly mounting emotions of cuddling (seals), economic interest or national (military) pride can only be dealt with suitable electoral respect. As a system, the present management of the Wadden offers involved parties few other choices. In its present form, the system inevitably provokes charges of ‘political interference with details’.

4. Towards an institutional redevelopment of the governance of the Wadden

On the grounds of our analysis, we believe that it is both desirable and possible to clarify and strengthen the structure of governance for the Wadden Sea. The saying *‘If it isn’t broke, don’t fix it’* is a very risky one with respect to the Wadden. *‘If it’s broke, you can’t fix it anymore’*. Even if there are no acute crises – and opinions on this differ – we still have to conclude that, from our perspective of good governance for the Wadden (as Common), there

are a number of reasons for improving the structure of governance. There is no simple solution nor are we talking about a completely new structure. Needed is a dynamic, evolutionary model aimed at adaptive governance and management. The road leading there consists of making a start and taking practical actions.

Our analysis suggests 10 points of attention as of strategic importance in breaking out of the situation we have sketched and the sometimes tacit blockades in decision-making with regard to the Wadden Sea as a (multiple-use) Common:

1. *Adequate scales and administrative boundaries.* The point of departure for every effective form of common pool governance is demarcating boundaries that are both clear and geared to the strategic problems. The PKB (Key Planning Decision) procedure was limited to planning authorities setting out boundaries for the Wadden Sea. But the underlying integrated problem of governance extends at least as far as the Wadden area. Those involved in the governance organisation of the Wadden Sea should work with the Wadden area as the basis and the relevant area of governance for the organisation, form and design of a system for unambiguous governance. A community based structure of governance would include not only the area of the Wadden Sea but also that of the island and coastal municipalities. This helps to give shape to intergovernmental management and to enhance both municipal support and intermunicipal cooperation. The provinces are functionally well positioned to look after the connections with the regional outlying areas. The national government is the natural ally for looking after the relevant national and international governance relations.
2. *Sound knowledge management and a public problem analysis.* An important requirement for adaptive management in complex systems is to 'provide information'.³⁴ Crucial to the adequate governance and management of a Common is the public management of available knowledge, information and scientific research. Not to have decisions made by

³⁴ Dietz, Ostrom, Stern, op. cit., *Science*, 2003:1908

experts and scientists – this is an illusion – but to create a knowledge infrastructure that is as scientifically responsible as possible in which political-governance decisions will have to be made. The recently established Wadden Academy potentially offers a *Wadden Expertise Centre*. It should have the possibility and the ambition of functioning as an international scientific knowledge centre oriented to providing public information on sustainability and nature conservation in the Wadden area as an international habitat. As The Wadden Expertise Centre the Academy should guarantee making an inventory of and updating relevant international knowledge and insights, safeguarding independent research and making available the results of the same.

3. *Internationally and BAT oriented strategy.* According to almost all standards, the existing structure is too bureaucratic and too divided. Legitimacy arguments suggest that executive management at a political-administrative level should be more strongly involved in the system of governance for the Wadden. Policy formation and the further making operational of the widely endorsed goals of policy, governance and management of the Wadden values focusing on sustainability and nature conservation must be internationally oriented and anchored in politics, governance and society. It is important to recognise, that particularly a ‘natural resource’ area like the Wadden is strongly ‘man-made’ and affected by socio-technological as well as by socio-ecological systems. It could be pointed out, that an area like the Wadden as a coastline very much resembles the area of Venice, Northern Italy. As a natural resource, the Wadden are a highly an artefact of cultural history. For a long time the area was primarily perceived as a hydraulic project. Leaving the area ‘to nature’, without technological protection, is very likely to change and end the Waddensea in its current ‘natural’ form – even without sea level rising due to global heating. Under the current conditions of scale and climate change the question of best available technology (BAT) also applies to the preservation of ‘natural areas’.
4. *Interest representation, lobbying and low cost conflict resolution* are unavoidable parts of the governance of the Commons and should be given a suitable place in the structure of

governance. Policy implementation and the executive board should be based on the principles of integrated governance and decentralisation and be 'community-based governance'. One possibility would be the creation of a Wadden Advisory Council that could serve as a platform for discussion and policy advice from general, environmental and social-economic perspectives. The recognition of and respect for legitimate 'historical' property rights of individuals and communities is important as the basis for a community based system of governance and 'negotiated order'. This requires access to forms of mediation and low cost conflict resolution in addition to and preferably preceding the stern legal and judicial appeal procedures which dominate current strategies at (not) resolving conflict regarding the "Waddenvaues".

5. *Guidance by an internationalised national policy.* The internationally validated goals and preconditions for policy relating to the Wadden Sea and the Wadden area should be laid down nationally. In the Dutch public law context, this supposes the availability of a *Wadden Council* – as a sub-council of the Council of Ministers – that periodically and on the basis of clear governance agreements would give body to the general and preferably legally anchored values and goals for the governance of the Wadden. The Wadden Council (of ministers) can gather expertise from the Wadden Expertise Centre and the Wadden Advisory Council and periodically but systematically involve local and regional government as well as international treaty partners and external experts in its work. To support this process a national or international 'Wadden conference' or 'Wadden top' should periodically be organised, best in cooperation with Germany and Denmark and other relevant partners. The results could be laid down in a periodical *Wadden Covenant* between national, provincial and municipal governments for each consecutive period of governance.
6. *Regional governance and community based legitimacy.* For decisive, effective and efficient policy implementation, an executive rather than a bureaucratic regional *Wadden Authority* should be formed. This should be a clearly recognisable and externally legitimised body at the centre of the inter-governmental management for the protection of

the international Wadden values. This regional *Wadden Authority* could replace the Regional Coordinating Board for the Wadden (RCW) as a *Regional Governance Committee for the Wadden Area*. As a community based institution, this should constitute the cooperative and collaborative effort between national, provincial and municipal governments and, as the executive committee, possess necessary executive and specifically assigned competence and authority to operationalise, implement and enforce the national and international policy goals relating to the Wadden Sea and the Wadden area.

7. *Transparent Executive Leadership*. Such a Regional Governance Committee for the Wadden Area, as a joint venture between national, provincial and municipal authorities, is community based but, in its governance activities, it is aimed at the national and international goals of sustainability and nature conservation. Participating governments could be represented in the general board of the Regional Governance Committee for the Wadden Area. To enhance the Committee's decisiveness, however, a collegial body should perhaps be led by an independent chair. This chairperson is responsible for leading, preparing and implementing the decisions of the Regional Governance Committee for the Wadden Area. He or she maintains relations with the Wadden Expertise Centre, looking after inter-governmental management, especially that resulting in the periodically revisable Wadden Covenant, coordinates contacts and serves as one of the contact points for 'good governance for the Wadden'. The chair would be responsible for managing the relations with the stakeholders, for improving external cooperative efforts and innovative approaches and for the good professional functioning of the Committee.
8. *Civil Society involvement in management of the Wadden Sea*. Promoting the idea of *stewardship* in the governance of the Wadden Sea is desirable and it is also necessary in order to create an overview of governance. Stewardship, involves 'individual or collective actions or commitments to manage or protect features of land, air and water directly

within the care or responsibility of the steward, respecting and using natural processes'.³⁵

The largest part of the Wadden Sea was not divided into areas of governance and, from the perspective of sustainability and nature preservation; this is something to be changed. *Stewardship* could be introduced by having institutions such as Natuurmonumenten (the Society for the Preservation of Nature) play a role in the governance of the Wadden Sea. By creating a *Stewardship Council*, terrain managers such as Staatsbosbeheer (National Forest Service), Natuurmonumenten and the provincial Landschappen (provincial trusts) could become institutionally involved in the administration and management of the 'Wadden values'. However, the concept of civil society governance presupposes a link between 'rights' (of say) and 'responsibilities' (codes of conduct). A system of certification for stewardship will have to be developed within a framework based on international experiences and standards.

9. *Collaborative shared services*. In addition to paying attention to quality and management, attention should also be given to the efficiency of the implementing organisation as a whole. There are significant possibilities for sharing, bundling and streamlining the implementing activities of regional boards and services such as Rijkswaterstaat (Department of Waterways) and Staatsbosbeheer. This could also be done with the various maritime functions that operate alongside one another in the Wadden area. Moreover, several inspection teams are active in the area. Introducing a system of shared services and merging these functions where possible and meaningful would enhance both the effectiveness and the efficiency of governance on the land and at sea. It would also be a concretely visible improvement for the inhabitants and users of the area.
10. *Evaluation and supervision for adaptive governance*. A well functioning system of governance agreements cannot exist without adequate and at some points independent supervision. The system of governance for the Wadden should have modern supervision in which modern technology is put to the best use to monitor *compliance*: following rules,

³⁵ Millar, op cit, 2003

agreements and good governance. In addition, policy should be justified by monitoring the development of the area and continually evaluating policy with regard to the goals of sustainability and nature conservation and the realisation of the same. It seems obvious that these tasks should be coupled to the function of problem analysis and knowledge management but, with respect to responsible parties, to place them with the Regional Commission for the Governance of the Wadden Area. In the international management of the Commons, it is of great importance to advance learning processes, innovation and the adaptive governance of areas of natural beauty and ecosystems. Resilience must be institutionalised. The advice for today's governance of the Commons is to focus on vulnerabilities and surprises, disasters, conflict and permanent technological and social innovations. In short, to '*be prepared for change*'.³⁶ Not Stand Still.

³⁶ Th. Dietz, E. Ostrom, Paul C Stern, The Struggle to Govern the Commons, in: Science, vol. 302, 12 December 2003: 1910.