



Letter to: Openbaar Lichaam Bonaire, STINAPA, Rijkswaterstaat

Concerning the Nature Permit, dated 23 October 2018, issued to Karel's Beach Bar & Watersport N.V. for building a pier in the Bonaire National Marine Park at Kaya J.N.E. Craane 10-12

Kralendijk / Zeist, 22 January 2018

Introduction and background

Together with the National Parks Foundation Bonaire (hereinafter "STINAPA"), the World Wide Fund for Nature Netherlands (hereinafter: "WWF-NL") has for many years committed itself to the protection, conservation and restoration of the lands and waters of Bonaire, including the flora and fauna that depend on those lands and waters. STINAPA is the statutory manager of the underwater park Bonaire National Marine Park which was founded in 1979. While WWF-NL supports STINAPA (e.g. expertise, financing, joint advocacy), the responsibility for managing the marine park lies fully with STINAPA. In addition to supporting STINAPA, WWF-NL also supports Sea Turtle Conservation Bonaire (hereinafter: "STCB") both financially and, where requested, with expertise. STCB has been protecting Bonaire's sea turtles and their environment for more than 27 years. In 2013 the manager of the Bonaire National Marine Park requested assistance from STCB to lead a lawsuit against the Public Entity Bonaire (hereinafter: the "OLB") relating to the legality of the permit issued to Karel's Beach Bar & Watersport N.V. WWF-NL was asked to support the lawsuit financially and technically.

In this context, STINAPA and STCB have regularly participated in meetings with representatives of the OLB. The parties greatly value this dialogue aimed at working together on the (meaning of) sustainable development on Bonaire in a joint, constructive and solution-oriented manner.

Because of the fear for irreparable damage to the Bonaire Marine Park and to ensure good governance, WWF-NL, STCB and STINAPA have closely followed the plans to build a pier in the highly protected underwater park Bonaire National Marine Park at Kaya J.N.E. Craane 10-12 and have successfully interacted in the legal process which lead to a number of lawsuits against the permits that were issued in this context as well as the amendment of the Spatial Development Plan Bonaire (hereinafter "ROB").

Nature Permit: draft and joint view

On February 9, 2017 Karel's Beach Bar & Watersport N.V. again applied for a permit under the Island Decree Underwater Park Bonaire for the construction of a pier in the highly protected underwater park Bonaire National Marine Park near Kaya J.N.E. Craane 10-12 (hereinafter: the "Nature Permit").

On September 6, 2017 STINAPA, WWF-NL and STCB jointly submitted their view (*zienswijze*), in which they

shared the concerns which they believed should be included in the decision by the OLB, were stated. The most important points of the submitted opinion were:

- It is unclear what is envisioned in the draft Nature Permit in terms of size, dimension and location for the construction of the pier. Moreover, the intended use of the pier is unclear. It is apparent that the pier will be used for catering activities, however, it is unclear in what way. It is important to clarify this matter as the marine life is already being disturbed by the foundation of the pier and the island decree underwater park does not include catering activities in the list of allowed uses of piers on Bonaire.
- The effects of the pier on the underwater park have not been researched sufficiently. Without proper and substantiation research, the protection of the underwater park cannot be ensured. Moreover, it is insufficiently clear whether and how the various judgements of the Court of First instance of Bonaire, Saint Eustatius and Saba and the The Joint Court of Justice of Aruba, Curaçao, Saint Maarten and of Bonaire, Saint Eustatius and Saba, in which various shortcomings in the decision-making process were observed, are incorporated and addressed in the current decision-making process.¹
- It is not clear how the draft nature permit relates to other regulations and policies, such as the ROB. The Court had judged in 2015 and 2016 that the ROB required adjustment if a pier was going to be built in that location. The draft-permit did not state if and how the ROB should be adapted to allow for the development and how the project was amended in order to fit into the possibilities allowed under the ROB.

In their joint statement, STINAPA, WWF-NL and STCB again emphasized their willingness to continue their conversations with the OLB. Following this, several meetings took place last year between STINAPA and OLB to which STCB and WWF-NL were not invited. These meetings ultimately led to an agreement between the OLB and STINAPA on the issuance of the Nature Permit on October 23, 2018. In addition, on November 1, 2018 Rijkswaterstaat issued a permit under the BES Maritime Management Act for the construction of a structure in the territorial sea of Bonaire.

Concerns regarding the nature permit as issued in October 2018

Although the OLB states that it took into account all relevant court decisions related to the pier when deciding to issue the Nature permit, no argumentation or proof was given on how this permit addresses the issues brought forward by STINAPA, WWF-NL and STCB and no substantiation was given on how the previous court decisions were incorporated in the permit, its conditions or the underlying legislation.

WWF-NL and STCB have not yet been given complete access to the documents accompanying the issued Nature Permit (i.e. application + drawings). As a result, the precise nature and scope of the permitted activities is still not fully clear and the position taken by the OLB on the Nature Permit as well as on the response to the expressed views on the assumed lack of environmental impact, is not verifiable. WWF-NL has submitted a request under the Government Information (Public Access) Act to receive these documents.

The draft Nature Permit stipulates that only tables, chairs and shading facilities are permitted on the pier itself.

¹ ECLI:NL:OGFABES:2014:2; ECLI:NL:OGFABES:2014:3; ECLI:NL:OGHACMB:2015:26; ECLI:NL:OGFABES:2014:4; ECLI:NL:OGHACMB:2016:26; ECLI:NL:OGHACMB:2016:28.

While this clause prevents further construction works on the pier, WWF-NL and STCB argue that if this permit allows construction of a pier outside of allowed uses as per island decree, it may set a precedent resulting in inability of OLB to argue against future requests for construction of piers in the marine park outside of legally stipulated uses.

Finally, WWF-NL and STCB are worried about the lack of an integrated and collaborative approach towards the issuance of all required permits and other decisions. As developments in the coastal and offshore waters of Bonaire may have major consequences for the future of the underwater park, the various permit procedures should have been aligned with all existing legislations, so that all the aspects that needed to be assessed and clarified were clear to all parties involved. Neither the Nature Permit nor the permit under the BES Maritime Management Act clarify whether and how the permitted activities legally fit into the Spatial Planning Plan Bonaire or the Decree Underwater Park Bonaire nor the Island Ordinance on Nature Conservation, suggesting that due process, as required by local legislation, was not followed.

Final statement

The marine park management authority STINAPA has now changed its approach towards the construction of the pier and has waived its previous objections. Since the responsibility for managing the marine park lies fully with STINAPA and neither WWF-NL nor STCB have a management mandate on Bonaire, WWF-NL and STCB decided not to officially object to the permit themselves. It is not and never was the intention of WWF-NL and STCB to go against STINAPA, since doing so will not contribute to their joint effort and objective to promote and safeguard nature conservation on Bonaire. However, WWF-NL and STCB explicitly distance themselves from the decision to give out the Nature Permit since neither WWF-NL or STCB were included in the decision making process and there is a lack of sufficient proof that the permit addresses issues identified in earlier court decisions and the view WWF-NL, STCB and STINAPA jointly submitted and there is still considerable doubt whether the permit was given in accordance to legally binding procedures.

Although nature conservation is the main objective for WWF-NL and STCB, they believe that nature conservation can be compatible with coastal development. However, WWF-NL and STCB deem it of the utmost importance that considerations and decisions made in such a context should be based on appropriate scientific evidence, transparency and strict adherence to relevant legislation and regulations. Both WWF-NL and STCB will remain fully committed to bringing parties together in search of nature based solutions in the future.



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