The Law Applicable on the Continental Shelf and the EEZ

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1. Introduction

This report concerns the legal situation of regulations applicable to the Dutch exclusive economic zone (EEZ), with one exception namely fiscal legislation. After a short discussion on the history of the Dutch EEZ I will report on the general laws and regulations applicable. Consequently I will present the special legislation thematically.

2. General: Zones at Sea

2.1. Territorial Waters

Since Grotius and Bynkershoek the boundaries of Dutch territorial waters ended at three miles off the low tide line. In 1985 the Act defining the boundaries of the territorial waters (Wet grenzen territoriale wateren) came into force; this Act extended the boundary to twelve miles off the coast. Through this Act, the area which forms the Dutch part of the continental shelf was in fact reduced by nine miles.

In 2005 the Act which suggested a contiguous zone of twelve miles adjacent to the territorial waters was introduced. This zone enables authorities to enforce regulations in the field of customs, tax, immigration and health which are applicable to the territory or in the territorial waters of the Kingdom of the Netherlands. The outside boundaries are fixed in a Statutory Order, implementing Articles 2 and 3 of the Act. The Act, as well as the Statutory Order, went into effect on 1 August 2006.

1 Staatsblad 1985, 129.
2 Staatsblad 2005, 387.
2.2. **Continental Shelf**

The Netherlands accepted and ratified the 1958 Convention on the Continental Shelf through the Act of 7 July 1965. As a consequence, the outer limit of the Dutch part of the continental shelf was to be laid down in treaties with Belgium, the United Kingdom, and Germany. These treaties respectively went into effect on 1 January 1999 (Belgium), 23 December 1966 (United Kingdom), and 7 December 1972 (Germany).


2.3. **Exclusive Economic Zone**

In 2000 an EEZ was introduced by the Act of 27 May 1999 (Rijkswet Instelling Exclusieve Economische Zone); this Act went into effect from 28 April 2000. It defines the boundaries of the EEZ as running from the territorial waters up to 200 nautical miles off the baselines from which the territorial waters are measured. The coming into effect of this Act and the outer boundaries will be indicated for the Netherlands and the Dutch Antilles by Statutory Order; in Article 1, subparagraph b, this Order (Besluit grenzen Nederlandse exclusieve economische zone) of 13 March 2000 defines as outer boundaries the boundaries of the Dutch part of the continental shelf. It went into effect on 28 April 2000. Thus the Dutch EEZ is effectively equal to the Dutch part of the continental shelf.

The actual Dutch EEZ runs from twelve miles off the coast up to the central boundary line which marks the borders between the Dutch, English and German parts of the continental shelf.

3. **General Legislation**

Preliminary remark:

Since the Kingdom of the Netherlands is one of the Member States of the European Union I will mention certain subjects regarding implementation of European Directives into Dutch legislation. Through the internal free market of the European Union, the Member States are obliged to adapt their national legislation in order to prevent obstacles for the free internal movement of persons or goods within the European Union.

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3.1. **Installations North Sea Act (Wet installaties Noordzee)**

The *Installations North Sea Act*\(^\text{14}\) went into effect on 5 December 1964. According to the legal preamble, the *Installations North Sea Act* intends to protect the legal interests with regard to installations placed on the seabed of that part of the North Sea whose boundaries coincides with that part of the continental shelf connected to the Netherlands.

Article 2 of the *Installations North Sea Act* declares the applicability of the Dutch Criminal Code to anybody committing an offence on or with regard to an installation at sea. This means that misdemeanors committed on board a ship or otherwise affecting an installation in any sense are covered by the Dutch Criminal Code.

Article 3 of the *Installations North Sea Act* states the same with regard to Dutch legal rules designated by Statutory Order.

Article 4 of the *Installations North Sea Act* provides for a Statutory Order by which jurisdictions of authorities are regulated and servants charged with execution of regulations by virtue of Article 3 or with execution of legal verdicts. This Order dates from 12 December 1964\(^\text{15}\) and points out in Article 2 that with regard to the jurisdiction of the criminal judge and the prosecuting office, offences committed on installations at sea will be prosecuted and judged by the district Court of Amsterdam.

Article 3 of the same Order assigns authority and jurisdiction to all criminal investigation police officers and the specially designated criminal investigators to perform their duty in the same manner as they would onshore. This is the basis for the criminal investigational capacity of amongst others (the inspectors of) State Supervision of Mines.

Article 5 of the *Installations North Sea Act* provides for a Statutory Order by which the applicability of the Criminal Code and other rules designated by virtue of Article 3 can be excluded or limited with regard to specifically designated installations. This makes the rule of Articles 2 and 3 less general. However, to November 2009 this option has not been taken up.

3.2. **Waterworks Management Act (Wet beheer Rijkswater-staatswerken)**

The *Waterworks Management Act*\(^\text{16}\) essentially went into effect on 1 January 1997. Its purpose is to protect waterworks owned by the Kingdom of the Netherlands against damage of any kind and to promote an efficient and safe use of these waterworks.

Although the intention is clearly to make the *Waterworks Management Act* applicable to the EEZ, (regulated by Act of 15 November 2000\(^\text{17}\) which went into effect on 6 December 2000) one might conclude the method to achieve this result is not effective. In Article 1, paragraph 2, the definition of waterworks has been extended to the EEZ as well. This deserves critical consideration; I propose that applicability beyond the boundaries of the territorial waters can only exist by means of an explicit article in the Act stating its applicability. Here the only mention is of extension of a definition to cover the EEZ as well, which is quite different from the explicit statement of applicability outside of the territorial waters. The Act’s explicit statement that it is not applicable to extractive activities in the EEZ\(^\text{18}\) leading to the contrary rationale that the Act is applicable to the EEZ regarding all other aspects does not convince me. This exemption of applicability to the EEZ is caused by

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\(^{14}\) *Staatsblad* 1964, 447.

\(^{15}\) *Staatsblad* 1964, 460.

\(^{16}\) *Staatsblad* 1996, 645 and 646.

\(^{17}\) *Staatsblad* 2000, 510.

\(^{18}\) Water Management Act, Art. 1b.
the fact that the *Extraction Act* has its own system for licensing and supervision by authorities.

The *Waterworks Management Act* introduces the requirement of a license for use of waterworks and protects these works against damage (including pollution of the environment) by activities by third parties.\(^\text{19}\) Licenses can be granted under conditions; besides conditions to safeguard the proper function of the waterworks, environmental protection interests are to be taken into account as far as these are not covered by other regulations. The *Waterworks Management Act* regulates the licensing for the construction and exploitation of wind parks as well.

Specifically with regard to installations in the EEZ, the Ministry of Transport and Public Works has issued a set of policy rules specifying obligations of Articles 2, 3 and 6 of the *Waterworks Management Act*. These policy rules are not part of the formal legislation; they specify how certain regulators in practice deal with rules of the Act. In this particular case the policy rules lay down, amongst others, criteria for granting a license and requirements for an application for a license.

### 3.3. Water Act\(^\text{20}\) (*Waterwet*)

The *Water Act* dates from 2009 and is going to replace a family of old acts with regard to management and protection of water infrastructure. The *Waterworks Management Act* will be replaced partially by the *Water Act*.

Article 1.4 of the *Water Act* explicitly states its applicability in the Dutch EEZ. With regard to this, the *Water Act* is better than its (partial) predecessor, the *Waterworks Management Act*. However, the *Water Act* is not yet in effect; it will replace, amongst others, parts of the *Waterworks Management Act* as far as the EEZ is concerned. As the *Water Act* comes into force, the licenses created by virtue of the *Waterworks Management Act* will be considered to be licenses according to Article 6.5\(^\text{21}\) of the *Water Act*. The act to introduce the *Water Act* has come into force on 22 December 2009.\(^\text{22}\)

### 4. Traffic Management

#### 4.1. The Shipping Traffic Act (*Scheepvaartverkeerswet*)

The *Shipping Traffic Act*\(^\text{23}\) went into effect on 1 September 1988. It is intended to set regulations for ship navigation on internal waters and the sea, as well as providing a legal basis to implement several international treaties.

The *Shipping Traffic Act* itself does not state its applicability to the EEZ. However, by Statutory Order, rules can be given to implement ‘Treaties or Decisions of Organizations according to International Law for Dutch ships in full sea or in all non-Dutch waters connected to full sea and navigable by seagoing vessels’.\(^\text{24}\) As with the extension of a definition in the *Waterworks Management Act*, one could think this means material applicability to the EEZ, where navigation lanes are positioned. Once again I am of the opinion that applicability beyond the boundaries of the territorial waters can only exist by

\(^\text{19}\) Water Management Act, Art. 2.

\(^\text{20}\) *Staatsblad* 2009, 107 and 2009, 490 (text in accordance with Art. 1.10 of the Implementing Act).

\(^\text{21}\) Bill to introduce the Water Act, Art. 2.23.

\(^\text{22}\) It passed the Lower House in August 2009 and the Upper House in November 2009.

\(^\text{23}\) *Staatsblad* 1988, 352 and 389.

\(^\text{24}\) Art. 20, first paragraph.
means of an article in the Act explicitly stating its applicability. Therefore, in my opinion, the Shipping Traffic Act is not applicable to the EEZ. Fortunately, I can find support for this opinion in the Note of clarification to the Water Bill.\footnote{Lower House document 30818, No. 3, p. 54.}

An almost identical option exists to implement ‘Treaties or Decisions of Organizations according to International Law’ for navigational traffic along the Dutch coast outside territorial waters according to Article 21, first paragraph, of the Shipping Traffic Act. Up to November 2009, however, no use has been made of the option to draw up a Statutory Order.

The shipping lanes, as far as they exist in the EEZ, are arrangements with other Member States of the International Maritime Organization. They are made known to shipping companies by the normal means of publication for merchant shipping in the Netherlands.

4.2. Merchant Shipping Act (Schepenwet)

The Merchant Shipping Act dates from 1909 and is applicable to Dutch ships wherever they are, regardless of whether they have crossed into the EEZ or not. Article 65 states that the penalty clauses of this Act, or by virtue of it, can be applied to anyone committing an offence within or outside the Kingdom. This includes offences committed within the EEZ.

The Merchant Shipping Act’s intention is to prevent marine disasters, to organize a proper investigation procedure in case of a marine disaster, and to arrange corrective measures for captains, helmsmen, and engineers.\footnote{See Preamble of the Merchant Shipping Act.} The Merchant Shipping Act introduces safety measures such as certificates and it creates the authority of the Shipping Inspectorate’s supervision. It also forms the legal basis for the Disciplinary Council and sets out the corrective measures this Council can impose.

4.3. Act on Aviation (Wet Luchtvaart)

The Act on Aviation dates from 18 June 1992\footnote{Staatsblad 1992, 368.} and went into effect on 1 January 1993. It regulates air traffic in Amsterdam’s flight information area and is applicable to Dutch aircraft and transport, as well as flights made by Dutch aircraft outside the flight information area of Amsterdam. In my opinion the intention of this Act is to extend applicability to Dutch aircraft both on and above the EEZ, although an explicit statement on applicability in or above the EEZ is lacking. From the air navigation map I have seen, it seems that the flight information area of Amsterdam has a complete overlap with the EEZ; as far as flight operations taking place in the EEZ with Dutch aircraft, the Act on Aviation is applicable. For the transport by means of helicopter to and from the installations in the EEZ this Act also applies.

4.4. Telecommunications Act (Wet Telecommunicatie)

The Telecommunications Act states in Article 1.2 that regulations in or by virtue of this Act apply to and with regard to installations at sea as defined in the Installations North Sea Act. This broad definition was chosen to cover all types of installations at sea. This raises the question of whether by this reference to the North Sea Installations Act the Telecommunications Act itself becomes applicable to the EEZ. I am of the opinion that applicability beyond the boundaries of the territorial waters only can exist by means of an explicit article in the Act stating its applicability. So, in my opinion, the Telecommunications Act is not applicable to the EEZ.
5. Working Conditions


The Working Conditions Act regulates the safety and health of employees in their professional activities and was renewed in 1999. The Working Conditions Act implements the Working Conditions (framework) Directive of the EU of 1989, including the 21 implementing EU Directives for different aspects of professional activities. The Working Conditions Act itself is a very short act; it’s implementing Statutory Order (the Working Conditions Order) and Regulations (Working Conditions Regulations) contain the most concrete rules for employees and employers.

The Working Conditions Act was not, in principle, applicable to the EEZ or continental shelf. The applicability was extended in two steps; from 2003 the Working Conditions Act (including the implementing Order and Regulations) became applicable to the EEZ and continental shelf as far as extractive activities are concerned. This was a result of the overall restructuring of the legal system for extractive industries; the Extraction Act went into effect from 1 January 2003, and through this Act the applicability of the Working Conditions Act, with appurtenances, was extended through the Dutch part of the continental shelf. The Extraction Act amended Article 2 of the Working Conditions Act in the sense mentioned above.

The restriction to the extractive industries was terminated by an amendment in 2007; as from 1 January 2007 the Working Conditions Act has unlimited applicability to the EEZ. The reason for the extension of the applicability was that the construction of offshore wind parks was expected in the near future. The legislature considered it inappropriate not to protect workers at those working areas at risk because of their professional activities.

The Working Conditions Act Order and Regulations have a very clear structure; after general regulations based on EU Directives, the specific regulations for each category of activity follow. Thus we can see specific regulations for the extractive industry by means of drilling after general rules applying to all professional work.

The Working Conditions Order lays down regulations in far more detail than the articles of the Working Conditions Act; the same applies for the Working Conditions Regulations. They also specify what should not be done on the job site.

5.2. Commodities Act (Warenwet)

The Commodities Act dates from 1935 and went into effect 1 January 1936. Amongst other things it regulates the technical requirements for equipment used in professional activities and the basic requirements for food. For technical products this Act implements European Directives as well.

28 Staatsblad 1999, 184 and 450.
30 Staatsblad 1997, 60 and 263.
31 Staatscourant Supplement 1997, 63.
34 Art. 184 Mijnbouwwet.
35 Staatsblad 1935, 793 and 822.
Since 2003 the *Commodities Act* applies to technical products used in the EEZ with work on or on behalf of civil technical constructions, or with the demolition of them, and on food that is provided on civil technical constructions in the EEZ. It safeguards the technical quality of equipment and tools used during professional activities of any kind. The *Commodities Act* deals with the hardware aspects of professional activities, whereas the *Working Conditions Act* regulates the software aspects such as human behaviour. For food, the Commodities Act applies only to ‘food that is negotiated on civil technical constructions in the EEZ’. After consultation with the regulator, it seems that an expansive interpretation of the word ‘negotiated’ implies the consumption by human beings. This author wonders if this interpretation would be valid in the eyes of a judge.

5.3. **The Working Hours Act and Order (Arbeidstijdenwet en –besluit)**

The *Working Hours Act* dates from 23 November 1995. The *Working Hours Act* aims to safeguard the safety and health of workers as far as these depend on working hours. The applicability to the continental shelf was established in 1995 and changed in 2006 by amendment of Article 2:8 introducing the term ‘EEZ’. This amendment went into effect on 1 January 2007.

The Working Hour Order specifies the actual concrete opportunities for services and working hours per trade, and thus contains a special paragraph for seagoing employees as well as the extractive industries.

5.4. **The Water Supply Act (Waterleidingwet)**

The *Water Supply Act* dates from 1957 and came into force on 1 April 1958. It outlines rules for a proper supply of drinking water and sets rules for the supplying companies. Article 1, paragraph 4, makes this Act applicable to both a collective water supply system and a mining installation situated on the Dutch part of the continental shelf.

6. **Environmental Protection**

Preliminary remark 1:
Since the Kingdom of the Netherlands is one of the Member States of the OSPAR Convention, I would like to mention here that national legislation implements regulations of the OSPAR Secretariat in conformity with the OSPAR Convention. The OSPAR Convention covers the North-East part of the Atlantic Ocean and oversees the protection of the environment in the Atlantic against pollution by navigation, extractive industries, or land-based sources of pollution.

36 *Commodities Act*, Art. 1a sub b.
37 *Staatsblad* 1995, 600.
38 *Staatsblad* 2006, 673.
39 Arbeidstijdenbesluit, paragraph 5.14.
40 *Staatsblad* 1957, 150.
41 *Staatsblad* 1958, 217.
42 See <www.OSPAR.org>.
43 *Tractatenblad* 1993, 16.
Preliminary remark 2:
Due to the membership in the EU of the Kingdom of the Netherlands, I have to draw attention again to the European dimension, especially with regard to environmental protection. The European Court of Justice ruled in a judgment of 20 October 2005 that the Habitat Directive of the EU is applicable to the EEZ as well. This judgment led to the introduction in Dutch Parliament of a bill extending some parts of the Dutch environmental legislation to the EEZ (see below). However, the licensing policy established on the basis of the Waterworks Management Act takes European Directives into account (see above).

Preliminary remark 3:
With regard to environmental protection, some of the acts presented hereafter implement regulations of the Law of the Sea Convention as well.

6.1. Environmental Management Act, including Environmental Management Order and Environmental Management Regulation (Wet milieubeheer)

The Environmental Management Act dates from 13 June 1979. It is the general set of regulations for the protection of the environment against the consequences of professional behaviour or activities. It is a system of Act, Order and Regulations by itself and applies indirectly to a small part to the EEZ as well. This comes via the Extraction Act where certain parts of the Environmental Management Act are stated to apply accordingly to extractive activities (see below).

6.2. Act to Prevent Sea Pollution (Wet verontreiniging zeewater)

The Act to Prevent Sea Pollution dates from 1975 and went into effect on 1 January 1977. Amongst others, it implements the Oslo Convention of 15 February 1972 (Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft) and regulates pollution of the sea from ships and/or aircraft. Article 1a of the Act to Prevent Sea Pollution (effective as of 18 May 2005) applies the Dutch Criminal Code to anyone who violates the regulations of or by virtue of this Act in or above the EEZ. This Act will be withdrawn when the Water Act enters into force.

6.3. Act to Prevent Pollution by Ships (Wet voorkoming verontreiniging door schepen)

The Act to Prevent Pollution by Ships dates from 1983 and came into effect on 15 April 1986 and implements the Maritime Pollution Treaty (International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL)).

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44 Judgment in the case C-6/04 Commission of the European Communities v. UK.
45 EU-Directive 92/43 of the Council of the European Communities of 21 May 1992 with regard to the preservation of natural habitats and wild flora and fauna (L 206).
46 Staatsblad 1979, 442.
47 Staatsblad 1975, 352 and 1976, 628.
48 Tractatenblad 1972, 62.
49 Staatsblad 2005, 49 and 240.
50 See Act to implement the Water Act, Art 2.1 sub d.
According to Article 2, this Act applies to all Dutch ships wherever they are present and to foreign ships in Dutch waters. Article 36(1) states the applicability of the Dutch Criminal Code to anybody violating the regulations by or by virtue of Article 5 of this Act outside the Netherlands. Article 36(2) declares that the Dutch Criminal Code is applicable to anybody violating the regulations by or by virtue of Article 12 of this Act in the EEZ.

The Act to prevent pollution by ships does not apply to dumping or other behaviour from or on board vessels as defined in Article 5(1) where regulations have been promulgated by or by virtue of the Act to Prevent Sea Pollution.

6.4. Act on Liability of Oil Tankers (Wet aansprakelijkheid olietankschepen)

The Act on Liability of Oil Tankers dates from 21 June 1975\textsuperscript{52} and went into effect on 21 July 1975. Article 3 holds the shipowner liable for damage from pollution caused by an incident. Article 1 defines damage by pollution as follows: ‘loss or damage outside the ship in the Netherlands … in the Dutch EEZ … caused by pollution as a consequence of leaking or dumping oil from the ship…’\textsuperscript{53}

6.5. Act to Prevent Against Accidents on the North Sea (Wet bestrijding ongevallen Noordzee)

The Act to Prevent against Accidents on the North Sea dates from March 1992\textsuperscript{54} and went into effect in November 1992. Its intention is, amongst others, to implement the Brussels Convention (International Convention on Civil Liability for Oil Pollution Damage) of 29 November 1969\textsuperscript{55} and the London Protocol of 2 November 1973.\textsuperscript{56} Article 2 of the Act to Prevent against Accidents on the North Sea to states its applicability at marine waters adjacent to Dutch territorial waters between 51’10” and 56” North latitude, which includes part of the EEZ. Installations and ships involved in extractive activities are not covered by this Act, according to Article 1 paragraph 6.

6.6. Order Containing General Rules for Environment Extractive Activities (Besluit algemene regels milieu mijnbouw)

The Order Containing General Rules for Environment Extractive Activities dates from 2008.\textsuperscript{57} It replaces a set of general rules attached to the environmental permit required for extractive activities required under the Extraction Act Article 40 (see below). The Order refers to ‘installations on the continental shelf’ rather than ‘in the EEZ’ which does not prevent its applicability to the EEZ.

\textsuperscript{52} Staatsblad 1975, 321.
\textsuperscript{53} Art. 1 sub g.a. Wet aansprakelijkheid olietankschepen.
\textsuperscript{54} Staatsblad 1992, 211 and 567.
\textsuperscript{55} Tractatenblad 1970, 197, Treaty holding action at full sea after accidents causing potential pollution by oil.
\textsuperscript{56} Tractatenblad 1977, 162, Protocol holding action at full sea after accidents causing potential pollution by other material than oil.
\textsuperscript{57} 3 April 2008, Staatsblad 2008, 125.
6.7. **Bill to amend the Nature Conservation Act and the Flora and Fauna Act with regard to Extension of their Applicability to the EEZ (Voorstel tot wijziging van de natuurbeschermingswet 1998 en de Flora- en Faunawet in verband met de uitbreiding van de werkingssfeer van beide wetten naar de exclusieve economische zone)**

The *Nature Conservation Act* dates from 25 May 1998 and went into effect on 22 January 1999. It serves to protect natural areas against deterioration by introducing various policy instruments such as management plans, licenses for activities in designated protected areas, etc. The *Flora and Fauna Act* dates from 25 May and went into effect on 2 July 1999. Its objective is to bring together in one Act different regulations regarding the protection of wild plants and animals in order to coordinate these regulations. This Bill was introduced in the Lower House on 3 July 2009 and serves to implement two European Directives in the area of nature conservation (see preliminary remark 2 above).

7. **Management of Natural Resources**

7.1. **Extractive Activities**

7.1.1. **Extraction Act including Order and Regulations (Mijnbouwwet, –besluit en –regeling)**

Legislation with regard to extractive activities on the continental shelf was introduced with the 1968 *Mining Act Continental Shelf*, which was replaced by the *Extraction Act* from 1 January 2003. The *Mining Act Continental Shelf* regulated the exploitation of minerals on the continental shelf beyond three miles. Extractive activities within three miles of the coast were regulated by the Act of 21 April 1810. The Act of 21 April 1810 (drafted by Napoleon) was the last act in French that remained applicable up to 1 January 2003. It was replaced at that time by the *Extraction Act*. Extractive activities are covered only for the exploration and exploitation of minerals situated more than 100 meter under the seabed. The production of other minerals is covered by the *Soil Removal Act* (see below).

The *Extraction Act* includes a system of licensing for exploration and exploitation of minerals. Additional chapters are dedicated to proper performance of activities and financial and fiscal aspects. The *Extraction Act* covers activities in the EEZ as well. The most important section concerning operations is Chapter 4, entitled ‘The proper performance of activities’. In this Chapter, Article 40 introduces the environmental permit for extraction. Further, the article states that part of the *Environmental Management Act* is applicable in cases where the *Environmental Management Act* itself is not applicable. The *Environmental Management Act* does not apply to the EEZ since the Act itself does not say so; therefore, the *Extraction Act* makes some parts of the *Environmental Management Act* applicable in the EEZ. Contravention of the regulations of the *Environmental Management Act* will be treated as contravention of Article 40 of the *Extraction Act*.

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58 *Tweede Kamernstuk* (parliamentary documentation Lower House) 32.002, Nos. 2 and 3.
60 *Staatsblad 1999, 15*.
61 *Staatsblad 1998, 402*.
62 *Staatsblad 1999, 264*.
The Extraction Order expands upon the more open norms of the Extraction Act and is herewith applicable to the EEZ as well.

The Extraction Regulations are even more detailed than the Extraction Order. Their applicability is similar to that of the Extraction Act and Order.

7.1.2. Soil Removal Act (Ontgrondingenwet)

The Soil Removal Act dates from 1965 and regulates the exploitation of minerals situated in the first 100 meters of the soil of the seabed.

Article 4a of the Soil Removal Act extends its applicability to the exploitation of minerals on the continental shelf as defined by the Extraction Act. Article 4(b) introduces State ownership of minerals in the seabed up to 100 meter below the seabed. Both articles went into effect on 1 January 2003. The Soil Removal Act introduces a system of licenses for the exploitation of natural resources in the seabed.

7.2. Fisheries

7.2.1. Fishery Zone Boundary Authorizing Act (Wet houdende machtiging tot het instellen van een visserijzone)

The basis of all fishery regulations, the Fishery Zone Boundary Authorizing Act of 8 June 1977, controls authorization to create a fishery zone. It includes the option to institute an exclusive fishery zone to a maximum of 200 nautical miles from the baselines of the territorial sea.

Article 2 of the Fishery Zone Boundary Authorizing Act states that the boundaries within which the Kingdom of the Netherlands carries out its exclusive jurisdiction with regard to fisheries are limited to 200 miles from the baselines of the Dutch territorial sea. The Act itself does not mention the EEZ. Since the Dutch EEZ is situated totally within the 200-mile boundary it follows that this Act is applicable to the EEZ.

The Statutory Order of 23 November 1977 implements Article 1 of the Act; it went into effect on 25 December 1977. The boundaries of the fishery zone coincide with the boundaries of the Dutch part of the continental shelf.

7.2.2. The Fisheries Act 1963 (Visserijwet)

The Fisheries Act 1963 dates from May 1963, and went into effect on 1 June 1964. It regulates different aspects of fisheries at sea and in internal waters. With regard to the EEZ, the Act does not explicitly state its applicability; however, Article 5 paragraph 1 of the Fisheries Act 1963 prohibits fishing in the waters situated within the fishery zone. As noted above, this zone stretches partly out over the EEZ. The Fisheries Act 1963 regulates, amongst others, the requirements for fishing vessels, fishing equipment, and the fish that is to be caught.

63 Staatsblad 1965, 509 and 1971, 520.
64 Staatsblad 1977, 345.
65 Staatsblad 1977, 665.
66 Staatsblad 1963, 312.
67 Staatsblad 1964, 142.
Article 58 of the *Fisheries Act 1963* extends the applicability of the Dutch Criminal Code to whoever commits the offences by virtue of Articles 3(a), 4 and 5 (*Fisheries Act 1963*) in the fishery zone, which is effectively the EEZ.

8. **Miscellaneous**

8.1. **Labour Act Extractive Activities North Sea (Wet arbeid mijnbouw Noordzee)**

The *Labour Act Extractive Activities North Sea* dates from November 1992 and went into effect on 1 February 1993. The *Labour Act Extractive Activities North Sea* is quite different from the other legislation presented here; it extends applicability of parts of the Civil Code to work performed on the continental shelf under Article 2 in combination with Article 1. It defines an employee as ‘someone performing work according to an employment agreement on or from a mining installation on the continental shelf’. Under Article 3 of the *Labour Act Extractive Activities North Sea* the employee who gets sick and is therefore not able to perform his/her work is still entitled to his/her salary for the duration of, at most, 104 weeks if this employee has no insurance in accordance with the relevant Dutch legislation for social security.

Article 10 of the *Labour Act Extractive Activities North Sea* deserves special attention as it gives exclusive authority to resolve disputes to the district Court of Alkmaar. Execution of judgments on the continental shelf is regulated by Article 10, paragraph 2.

Most likely this *Labour Act Extractive Activities North Sea* has lived its longest time. See final remarks.

8.2. **Nuclear Power Act (Kernenergiewet)**

The *Nuclear Power Act* dates from 1963 and went into effect on 27 March 1963. Article 2 announces the applicability of rules and regulations by of this Act on extractive activities defined in the *Extraction Act*, as far as these take place on the continental shelf. According to its preamble, the intention of the Nuclear power Act is to set rules to foster development of nuclear energy and the use of radiation-emitting equipment, as well as to protect against the dangers involved in these activities. In the extractive industries, some radiation-emitting equipment and measuring methods use nuclear materials, which explains the applicability of this Act to the EEZ for these extractive industries.


The *Patent Act* dates from 1994 and went into effect on 1 January 1995. It protects all products and activities to which a patent has been applied. Article 55, paragraph 2, and Article 57, paragraph 3, of the Patent Act extend the protection of these articles to the Dutch part of the continental shelf. Article 74 extends the validity of rights and obligations in, on, and above the Dutch part of the continental shelf. These three extensions are only for activities intended for, and performed during, exploration of natural resources or their exploitation.

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68 Staatsblad 1992, 592.  
69 Staatsblad 1993, 44.  
70 Staatsblad 1963, 82.  
72 Staatsblad 1995, 51.  
8.4. **Social Security Regulations**

Apart from the applicability of the acts and regulations presented above, I would like to draw attention to certain other aspects in Dutch legislation applicable in the EEZ.

Article 2, paragraph 3 of the *Industrial Disability Insurance Order* \(^{74}\) (Besluit uitbreiding en beperking kring verzekerden WAZ) states that workers in the EEZ are not considered to be working abroad. Therefore they have the full benefit of the national social security system as far as disability insurance is concerned. This means that a part of the Dutch social security system has extraterritorial applicability. This is not the only example.

Article 12, paragraph 3 of the *Extension and Limitation Circle Insured People National Insurance Order 1999* \(^{75}\) (Besluit uitbreiding en beperking verzekerden volksverzekeringen 1999) contains the same extension concerning national insurance in favour of workers in the EEZ.

8.5. **Management of the EEZ**

An overall policy statement of the Dutch government concerning the management of the North Sea, including the EEZ, can be found in the *Integrated Management Plan North Sea 2015* (Integraal Beheerplan Noordzee 2015) \(^{76}\), which was drafted in 2005. It embodies the North Sea paragraph of the general *Space Memorandum* (Nota Ruimte) \(^{77}\) published by the Dutch Government in 2006 and in force until 2030.

9. **Supervision and Law Enforcement**

9.1. **Supervision**

Many of the abovementioned acts allocate authority for supervision and criminal investigation to bodies of the central government. There are very few government supervisors active in the EEZ. This supervision includes administrative enforcement of regulations.

9.2. **State Supervision of Mines**

State Supervision of Mines is an old supervisory service of the government, founded in the old *Napoleonic Act* of 21 April 1810. State Supervision of Mines performs an overall supervisory role over extractive activities; due to its experience with conditions of the offshore oil and gas industry, it also supervises the construction of offshore wind parks. In the offshore area it takes on the position the Labour Inspectorate has onshore, supervising all professional activities according to the rules of the *Working Conditions Act*. On behalf of the Environmental Inspectorate of the Ministry of Environmental Management and Spatial Planning, State Supervision of Mines supervises the environmental aspects of the extractive activities as well.

In the extractive industries, two other supervisory bodies are active: the Aviation division of the Inspectorate of Public Waterworks and Transport (*Inspectie Verkeer & Waterstaat*) supervises all aspects of air transport to and from the mining installations. The Telecom Agency, part of the Ministry of Economic Affairs, supervises all the telecommunication

\(^{74}\) *Staatsblad* 1997, 797.

\(^{75}\) *Staatsblad* 1998, 746.

\(^{76}\) See <www.noordzeeloket.nl>, ruimtelijk beheer.

\(^{77}\) See <www.minvrom.nl>, ruimte > nota ruimte.
aspects of the offshore extractive industries. Servants of the two bodies are appointed separately according to Article 131 of the *Extraction Act*. They have exclusive authority for their professional working areas, i.e. telecommunication equipment and operations, infrastructure procedures and skills for helicopter operations.

9.3. **Netherlands Coastguard (Kustwacht)**

Several ministries are involved in supervision off territorial waters. To organize these activities in a proper and effective manner, the Netherlands Coastguard was officially instituted by Decree of the Cabinet of 10 March 2006, effective as from 1 January 2007. This Decree is signed by the Minister of Public Works and Transport and the Minister of Defense. The management of the Coastguard lies with the Ministry of Defense. The Coastguard performs a variety of tasks in the field of search and rescue and emergency response.

9.4. **North Sea Directorate (Directie Noordzee)**

The management of all activities of the Ministry of Public Works and Transport with regard to the North Sea is undertaken by the North Sea Directorate, which represents the minister in administrative procedures. The North Sea Directorate distributes licenses according to the terms of the *Waterworks Management Act*. This Directorate is the administrative enforcement authority for this Act and the *Soil Removal Act*.

With regard to the management of the North Sea, a policy statement published in 2005 entitled ‘Integrated Management Plan North Sea 2015’ sets out the goals the Ministry of Public Works and Transport. The management plan includes the EEZ as well.

9.5. **Inspectorate Traffic and Public Works (Inspectie Verkeer en Waterstaat)**

The Inspectorate Traffic and Public Works has administrative supervision for the *Shipping Traffic Act*, the *Ship Act*, the *Act to Prevent Pollution by Ships*, and the *Act on Aviation*. It performs this function in the EEZ as well. It exclusively supervises the regulations of the *Extraction Act* with regard to helicopter operations for extractive industries and their support/supply companies.

9.6. **General Inspection Service (Algemene Inspectiedienst)**

The General Inspection Service comes under the Ministry of Agriculture, Nature Management and Food Quality. The General Inspection Service supervises the acts with regard to fisheries and nature conservation that apply in the EEZ.

9.7. **Law Enforcement**

Law enforcement begins with investigation which is a job for the police; the Dutch police also have a special branch for the North Sea, and conduct regular patrols in the EEZ. Some of the inspectors of State Supervision of Mines have the authority to perform criminal investigations, particularly with regard to accidents and suspicion of a criminal offence.

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79 Besluit instelling kustwacht, Art. 2, paragraph 2.
80 See p. 13.
directly related to extractive activities. Their authority is limited; investigation into general offences is not to be undertaken by State Supervision of Mines unless upon explicit request of the Public Prosecutor. Criminal investigations by State Supervision take place under the authority of the Public Prosecutor.

The Netherlands Coastguard is charged with criminal investigations for legislation regarding environment, fisheries, extractive activities, and navigation.82

I would like to draw attention to the fact that only the Public Prosecutors Office in Amsterdam is authorized for criminal enforcement. This has its basis in the Order based on the Installations North Sea Act. Similarly, only the Court in Amsterdam has the authority to hear cases concerning criminal offences committed in or on the EEZ.

10. Final Remarks

The Kingdom of the Netherlands has a quite well developed legislative framework as far as the EEZ is concerned. One of the main reasons for all of these regulations is the development and exploitation of natural resources, including minerals and wind energy, which increasingly takes place in the EEZ. This exploitation, however, should be profitable for the environment and people, which is demonstrated by the extension of legislation regarding environmental protection. At the time of writing this report, the procedure had commenced for extension of the Act to protect the natural resources in the EEZ. The development in international legislation, more specifically in the European Union, also is a factor in the Netherlands’ legal regime in the EEZ.

Due to the development for the use of renewable energy, I have made a recommendation to the Minister of Social Affairs and Employment to extend the applicability of the Labour Act Extractive Activities North Sea (Wet arbeid mijnbouw Noordzee) to workers other than those in the extractive industries. The reason for this call is similar to the one that led to the extension of the Working Conditions Act (Arbeidsomstandighedenwet) to other workers than those in the extractive industry: no justification exists to limit the protection given to employees in the field of extractive activities. I am proud of having received a positive response to this request.

On 7 May 2010 a bill83 was introduced in Parliament leading to the result I proposed to the minister of Social Affairs. This bill aims to extend quite a large part of the social security system to employees on the Dutch part of the continental shelf. The introduction was caused by a Notification of the European Commission to the Netherlands in 2007. The Dutch government likes to bring this bill into effect from 1 January 2011. It will lead to expiration of the Labour Act Extractive Activities North Sea (Wet arbeid mijnbouw Noordzee).


82 Besluit instelling kustwacht, Art. 4, paragraph 2.
83 32 383 Wet verzekeringen continentaal plat.